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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Docket Number DA–03–03]

RIN 0581–AC32

Increase in Fees for Federal Dairy Grading and Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fees charged for Federal dairy grading and inspection services performed by the Dairy Grading Branch. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. The hourly fees will be adjusted by this action to reflect the increased costs of providing service and to ensure that the Dairy Grading Branch operates on a financially self-supporting basis.

EFFECTIVE DATE: April 4, 2004.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, USDA, AMS, Dairy Programs, telephone (202) 720–3171 or e-mail *Duane.Spomer@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy grading and inspection services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy grading and inspection services that cover the cost of providing these services. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits—which account for nearly 80 percent of the non-travel related operating costs—training, and administrative costs. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule, effective January 4, 1998, would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. Costs in FY 2004 are projected at $5.95 million. Without a fee increase, FY 2004 revenues are projected at $5.71, and the trust fund balance would be $2.09 million. With a fee increase, FY 2004 revenues are projected at $6.14 million, and the trust fund balance would be $2.52 million.

Employee salaries and benefits account for approximately 80.0% of the non-travel related operating budget. The majority of travel costs are billed directly to the users of services provided by the Dairy Grading Branch on a cost-recovery basis. Since the January 4, 1998, fee increase, Federal salaries and location adjustments have increased annually. The average salary has increased approximately 17.4% during this 6-year period. As a result of these increases, annual salary and benefit costs to the program are approximately $556 thousand more today than in 1998. Inflation has also increased the operational and administrative costs associated with this program, and a fee increase is necessary to sustain the program. If the short fall is allowed to continue, it will place the Dairy Grading Branch in an unstable financial position that will adversely affect its ability to provide dairy grading and inspection services.

This proposal will also generate funds to automate current business practices of the Dairy Grading Branch that will minimize the extent of future fee increases. Automated business practices will also enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection services and information to users of dairy grading and inspection services.

In view of these considerations, AMS will increase the hourly fees associated with Federal dairy grading and inspection services. The hourly fee for resident services provided between the hours of 6:00 a.m. and 6:00 p.m. will increase from $51.00 to $57.00 per hour. The hourly fee for nonresident services between the hours of 6 a.m. and 6 p.m. will increase from $56.00 to $62.00 per hour. The hourly fee for resident services provided between 6 p.m. and 6 a.m. will be $61.60 and for nonresident services the fee will be $68.20. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fee would apply, and as a result, the fee will increase from $84.00 per hour to $93.00 per hour.

Executive Order 12866

This action has been determined to be "not significant" for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the AMS has considered the economic impact of this action on small entities. It has determined that its provisions would not have a significant economic effect on a substantial number of small entities.

AMS provides voluntary Federal dairy product grading and inspection services to about 350 users of services provided by the Dairy Grading Branch. Manufacturing operations participating in the voluntary plant inspection program have their facility inspected against established construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA requirements are eligible to be inspected and graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products inspected or graded by the Dairy Grading Branch have certificates issued concerning the product's quality and condition. Many

of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). This rule will raise the fee charged to businesses for voluntary inspection and grading services for dairy and related products and the evaluation of food processing equipment. Even though the fee will be raised, the increase is approximately 10.7% for nonresident service and 11.8% for resident service and will not significantly affect these entities. These businesses are under no obligation to use these voluntary user-fee based services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The AMS estimates that overall this rule would yield an additional $522,000 annually. This action reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act.

The AMS regularly reviews its user-fee financed programs to determine if fees are adequate and if costs are reasonable. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy. Without a fee increase, total revenue projections—including travel revenue—for Fiscal Year 2004 would be $5.71 million. Total costs—including travel costs—for the same period of time are projected to increase to $5.95 million. The shortfall, if allowed to continue, would translate into a trust fund balance of $431 thousand or 0.8 months of operating reserve at the end of FY 2007, which is below the Agency policy requirement.

This action raises the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action will provide the Dairy Grading Branch an additional $522 thousand annually. This will generate revenue to recover program costs, automate business practices to minimize the extent of future fee increases, and enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection information to users of these services.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal dairy grading and inspection services.

Comments and Responses

AMS published a proposed rule in the **Federal Register** on October 3, 2003 (68 FR 57882) to increase the fees for Federal dairy grading and inspection services and requested comments by November 3, 2003. The Agency did not receive comments on this proposal.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For the reason set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

■ 1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

§ 58.43 [Amended]

■ 2. In § 58.43, "$56.00" is removed and "$62.00" is added in its place, and "$61.60" is removed and "$68.20" is added in its place.

§ 58.45 [Amended]

■ 3. In § 58.45, "$51.00" is removed and "$57.00" is added in its place.

Dated: February 20, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4222 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance; Living Trust Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its share insurance rules to simplify them and maintain parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendment changes the existing rules concerning coverage for beneficial interests in living trust accounts. The rules are amended by eliminating the provisions that would limit insurance coverage where the interest of the beneficiary is subject to a defeating contingency in a living trust agreement. With the amendment, share insurance coverage of up to $100,000 is provided per qualifying beneficiary who, as of the date of an insured credit union's failure, would become the owner of assets in the living trust upon the account owner's death. The FDIC recently amended its deposit insurance rules by making a similar change. This amendment is adopted as an interim rule to provide parity between NCUA and FDIC insurance regulations and aid the public and prevent confusion over the amount of Federal account insurance available on those accounts.

DATES: This final rule is effective on April 1, 2004. Comments must be received on or before April 26, 2004.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Ross Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6562.

SUPPLEMENTARY INFORMATION:

A. Background

Living trusts have become an increasingly popular way for individuals to transfer assets outside of probate while retaining control of the funds during their lifetime. Where a grantor establishes a share account with funds that are subject to a separate living trust agreement, share insurance coverage is provided in accordance with NCUA's rules that govern revocable trust accounts. 12 CFR 745.4. The NCUA believes, based on its experience and upon the experience of the FDIC, that many persons who have established living trust accounts do not understand the impact under the current rules of a defeating contingency on the availability of separate insurance

coverage for beneficial interests in the account, even for "qualifying beneficiaries" (the spouse, child, grandchild, parent or sibling of the grantor).

The rules were designed to cover a straightforward "payable on death" account, sometimes simply referred to as a "POD" account, that provides for the payment of any balance remaining in an account upon its owner's death to specified beneficiaries. Evidence of the intent of the account owner to pass funds to one or more beneficiaries may be as simple as a designation in the account signature card such as "POD." By contrast, a living trust arrangement involves a separate, often complex trust document that may specify that an identified beneficiary's right to receive some portion of the account balance is dependent upon certain conditions.

Currently, if the interest of a qualifying beneficiary in an account established under the terms of a living trust agreement is contingent upon fulfillment of a specified condition, referred to as a defeating contingency, separate insurance is not available for that beneficial interest. Instead, the beneficial interest would be added to any individual account(s) of the grantor and insured to a maximum of $100,000. Because the coverage for these types of accounts is under the same rules that govern a simple "payable on death" account, members and credit unions sometimes mistakenly believe that interests in living trusts are automatically insured up to $100,000 per qualifying beneficiary.

An example of a defeating contingency is where an account owner names his son as a beneficiary but specifies in the living trust document that his son's ability to receive any share of the trust funds is dependent upon him successfully completing college. Another common example is where a grantor's will provides that funds in the living trust account can be used to satisfy a legacy made in the will. A third example is where the interest of one beneficiary is dependent upon another beneficiary's surviving the grantor. In each case, the current rule operates to prevent separate insurance coverage, even for a qualifying beneficiary, because his or her interest is contingent.

Even though the existing rules contain a definition of a defeating contingency and an explanation of how such a contingency can defeat separate insurance coverage, our experience, consistent with that of the FDIC, is that the operation of the rule is not widely understood. NCUA recognizes that the rules governing the insurance of living trust accounts are complex and confusing. The FDIC reports that it has had to deny separate insurance coverage for some beneficiaries of living trusts in cases where it was clear that the grantor was not aware of the impact of language in the trust agreement. NCUA staff have reviewed recent examples of trust agreements that appear to have inadvertently created defeating contingencies that would thwart separate insurance for otherwise qualifying beneficiaries. In addition, the current rules may require a detailed review of the trust documents to determine if a defeating contingency exists. This effort is both difficult and time consuming.

B. Parity With FDIC Deposit Insurance Rules

The changes will minimize confusion about the application of NCUA's insurance rules to these types of accounts and maintain parity with FDIC insurance on similar accounts at banks and savings associations. The policy of the NCUA Board is to maintain parity with the FDIC, since the account insurance funds administered by both agencies are backed by the full faith and credit of the Federal Government. NCUA believes it important that members of the public who use living trust accounts for the future transfer of ownership of family assets without loss of control during the owner's life receive the same protection, whether the accounts are maintained at credit unions or other federally insured institutions.

C. The Interim Rule

NCUA has revised the current living trust account rules to provide for insurance coverage of up to $100,000 per qualifying beneficiary who, as of the date of a credit union's failure, would become entitled to the living trust assets upon the owner's death. While this approach provides insurance coverage for qualifying beneficial interests irrespective of defeating contingencies, a beneficiary's trust interest that is dependent upon the *death* of another trust beneficiary will still not qualify for separate insurance. If a beneficiary's interest is subordinate only to a life estate of another beneficiary, that interest will be insured. The amended rule allows for separate insurance for both the life estate and the remainder interest for qualified beneficiaries.

An example that illustrates the basic rule is where an account established under a living trust provides that the trust assets go in equal shares to the grantor's three children upon the grantor's death. This account would be eligible for $300,000 of deposit insurance coverage. The coverage would still be $300,000 even if the trust provides that the funds would go to the children only if each graduates from college before the owner's death because defeating contingencies will no longer be relevant for deposit insurance purposes.

Another example would be where a living trust provides that the owner's spouse becomes the owner of the trust assets upon the owner's death but, if the spouse predeceases the owner, the three children then become the owners of the assets. In this case, if the spouse is alive when the credit union fails, the account will be insured up to a maximum of $100,000, because only the spouse is entitled to the assets upon the owner's death. If at the time of the credit union failure, however, the spouse had predeceased the owner, then the account would be eligible for up to $300,000 coverage because there would be three qualifying beneficiaries entitled to the trust assets upon the owner's death.

Consistent with the FDIC's position, the NCUA has also determined not to require a credit union to maintain records disclosing the names of living trust beneficiaries and their respective trust interests. The FDIC solicited comment specifically on this matter and concluded that to do so would be unnecessary and burdensome. The NCUA Board concurs with that judgment, recognizing that a grantor may elect to change the beneficiaries or their interests at any time before his or her death and that requiring a credit union to maintain a current record of this information is impractical and unnecessarily burdensome. The general principles governing share insurance coverage in NCUA's regulations, however, require that the records of the credit union disclose the basis for any claim of separate insurance. 12 CFR 745.2(c). This obligation may be met if the title of the account or other credit union records refer to a living trust. The final rule makes reference to this fact, but specifically disclaims any requirement that the credit union's records must identify beneficiaries or disclose the amount or nature of their interest in the account.

NCUA believes the final rule achieves two important objectives: simplifying the existing rule and providing consistency in how insurance coverage is determined for all types of revocable trust accounts. With the amendment, both living trust accounts and "payable on death" accounts will have insurance coverage calculated in the same fashion. In each case, coverage is based upon the interest of the beneficiaries who will

receive the account funds when the owner dies, determined as of the date of the credit union's failure, regardless of any contingencies or conditions affecting those interests. In addition, the amendment will provide credit unions and their members with a better understanding of the share insurance coverage rules and will help to eliminate the present confusion surrounding the coverage of living trust accounts.

Non-qualifying beneficiaries

The amendment does not change the way in which non-qualifying beneficiaries are treated for share insurance purposes. As is the case with traditional revocable trust accounts, a beneficiary must be the spouse, child, grandchild, parent or sibling of the grantor in order to qualify for separate insurance coverage. The interest of any non-qualifying beneficiary will be added to any other single-ownership or individual funds of the grantor and insured to a maximum of $100,000.

Life estate and remainder interests

Living trusts sometimes provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries. The final rule addresses this situation by deeming each life estate holder and each remainder beneficiary to have an equal interest in the trust assets and provides up to $100,000 coverage per qualifying beneficiary. For example, assume a grantor creates a living trust providing for a spouse to have a life estate interest in the trust assets with the remaining assets going to their two children upon the spouse's death. The assets in the trust are $300,000 and a living trust account is opened for that full amount. Unless otherwise indicated in the trust, the NCUA would deem each of the beneficiaries to own an equal share of the $300,000, and the full amount would be insured. This result would be the same even if the spouse has the power to invade the principal of the trust, because, under the amended rule, defeating contingencies are no longer relevant for insurance purposes.

Another example would be where the living trust provides for a life estate interest for the grantor's spouse and remainder interests for two nephews. As in the preceding example, each beneficiary would be deemed to have an equal ownership interest in the trust assets, unless there were an indication specifying different ownership interests. Here the life estate holder is a qualifying beneficiary, the grantor's spouse, but the remainder beneficiaries, the grantor's nephews, are not. As such, assuming an account balance of $300,000, the living trust account would be insured for *at least* $100,000 because the grantor's spouse is a qualifying beneficiary. The $200,000 attributable to the grantor's nephews would be insured as the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the same credit union, then only $100,000 would be insured. Thus, the $300,000 in the living trust account would be insured for a total of $200,000 and $100,000 would be uninsured. The NCUA believes this is a simple, balanced approach to insuring living trust accounts where the living trust provides for one or more life estate interests and is also consistent with the FDIC's approach.

Appendix

The interim rule makes a corresponding change to Example 4, under part B of the appendix to part 745, to reflect this amendment. It removes language that had been in that example discussing the need to determine whether a defeating contingency adds an example to illustrate the operation of the rule in cases involving a life estate and remainder interests.

D. Request for Comments

The Administrative Procedure Act requires that an agency must provide an opportunity for public comment before issuing a final rule unless it finds for "good cause" that public comment is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The NCUA Board has determined that public comment is unnecessary and contrary to the public interest because: The rule preserves parity with recently amended account insurance rules administered by the FDIC, 69 FR 2825 (January 21, 2004); the rule benefits credit union members and employees by simplifying how to determine the amount of coverage available on a commonly used account; it increases the amount of coverage that is available for the benefit of credit union members; and it does not prejudice credit union members or credit unions or require changes to current practices. Nevertheless, this is an interim final rule, and the Board will accept comments for a period of 60 days following the date of publication in the **Federal Register**. All comments will be considered and the rule may be changed in light of the comments received.

E. Effective Date

To avoid confusion and preserve parity with the FDIC, this interim rule will become effective on April 1, 2004, the beginning of the next calendar quarter following publication in the **Federal Register**. Consistent with the FDIC's approach, the rule will apply as of that date to all living trust accounts unless, upon the failure of an insured credit union, a member who established a living trust account prior to April 1, 2004, elects coverage under the previous living trust account rules. If a credit union fails between the date of publication in the **Federal Register** and April 1, 2004, NCUA will apply the final rule if doing so will result in greater coverage for a living trust account.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies the share insurance coverage available to credit union members, without imposing any regulatory burden. The final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. NCUA has obtained the determination of the Office of Management and Budget that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on February 19, 2004.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR Part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. Section 745.4 is amended by revising paragraph (e) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(e) *Living Trusts.* Insurance treatment under this section also applies to revocable trust accounts held in connection with a so-called "living trust," meaning a formal trust that an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the share account held in connection with the living trust may be eligible for share insurance under this section, assuming compliance with all the provisions of this part. This coverage applies only if, at the time an insured credit union fails, a qualifying beneficiary would be entitled to his or her interest in the trust assets upon the grantor's death and that ownership interest would not depend upon the death of another beneficiary. If there is more than one grantor, the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (e) is irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the share account upon the account owner's death. The rules in paragraph (c) of this section on the interests of non-qualifying beneficiaries apply to living trust accounts. For living trust accounts that provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life estate holder and each remainder-man will be deemed to have equal interests in the trust assets for share insurance purposes. Coverage will then be provided under the rules in this paragraph (e) up to $100,000 per qualifying beneficiary. For a living trust account to qualify for coverage provided under this paragraph (e), the records of the credit union must reflect that the funds in the account are held pursuant to a formal revocable trust, but the credit union's records need not indicate the names of the beneficiaries of the living trust or their ownership interests in the trust. Effective April 1, 2004, this paragraph (e) will apply to all living trust accounts, unless, upon an insured credit union failure, a member who established a living trust before April 1, 2004, chooses coverage under the previous living trust account rules. For any insured credit union failures occurring between February 19, 2004 and April 1, 2004, the NCUA will apply the living trust account rules in this revised paragraph (e) if doing so would benefit living trust account holders of such insured credit union.

* * * * *

■ 3. The appendix to part 745 is amended by revising Example 4 and adding new Example 5 under section B to read as follows:

Appendix to Part 745–Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * * *

Example 4

Question: Member H invests $200,000 in a revocable trust account held in connection with a living trust with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds would normally be insured under the rules governing revocable trust accounts up to $100,000 as to each beneficiary. (§ 745.4(b)). However, because this account is held in connection with a living trust whose named beneficiaries are qualifying beneficiaries under § 745.4, it must be scrutinized to determine whether the account complies with all other provisions of this part. Assuming that the account complies with all other requirements of this part, then it will be treated as any other revocable trust. In this instance, it will be insured up to $100,000 as to each beneficiary (§ 745.4(e)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

Example 5

Question: H creates a living trust providing for his wife to have a life estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust share account is opened for that full amount. What is the coverage amount?

Answer: Unless otherwise indicated in the trust, each beneficiary (all of whom here are qualifying beneficiaries) would be deemed to own an equal share of the $300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.

* * * * *

[FR Doc. 04–4217 Filed 2–25–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–05–AD; Amendment 39–13488; AD 2004–04–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs) for GE CF6–80 series turbofan engines with certain stage 1 high-pressure turbine (HPT) rotor disks. Those ADs currently require initial and repetitive inspections of certain stage 1 HPT rotor disks for cracks in the bottom of the dovetail slot. This action retains the

initial inspection requirement, as a qualification for the mandatory rework procedures for certain disks, and continues repetitive inspections only for the disks for which the rework procedures are not yet defined. This action requires reworking certain disks before further flight. In addition, this AD expands the population of affected engines and removes certain CF6–80E1 series disks from service. This AD results from the manufacturer's investigation and development of a rework procedure that chamfers the aft breakedge of the dovetail slot bottom. We are issuing this AD to detect and prevent cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

DATES: Effective March 12, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 12, 2004.

We must receive any comments on this AD by April 26, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

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

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7128, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: On May 10, 2001, the FAA issued AD 2001–10–07, Amendment 39–12233 (66 FR 27592, May 18, 2001). That AD requires initial and repetitive inspections of certain stage 1 HPT rotor disks installed on CF6–80C2 turbofan engines for cracks in the bottoms of the dovetail slots. That AD resulted from a report of an uncontained failure of an engine during a high-power ground run during maintenance. On January 2, 2003, we issued AD 2003–01–05, Amendment 39–13016 (68 FR 1519, January 13, 2003). That AD requires initial and repetitive inspections of certain stage 1 HPT rotor disks installed on CF6–80A series turbofan engines for cracks in the bottoms of the dovetail slots. AD 2003–01–05 resulted from a report of an uncontained failure of a CF6–80A series engine during climb. The manufacturer investigated those two failures as well as findings of cracks on other disks to determine the root cause of the failures. Those investigations showed that the cracks started from tool marks, broach burrs, damage sustained from improper handling and processing, and other unknown causes. The manufacturer and the FAA have determined that those conditions could also exist on stage 1 HPT rotor disks that are installed in certain CF6–80E1 series turbofan engines. Those conditions, if not corrected, could result in cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

Actions Since AD 2001–10–07 and AD 2003–01–05 Were Issued

Since we issued those ADs, the manufacturer developed a rework procedure to eliminate the root causes of the cracks. This rework procedure removes potentially damaged material from the breakedge and makes the geometry less susceptible to damage that could lead to cracks in the bottoms of the dovetail slots and subsequent failure. As part of the rework procedure, the disks are remarked with a different part number. The rework replaces the current requirements for initial and repetitive inspections on those disks for which rework is defined.

Stage 1 HPT rotor disks, part number (P/N) 9367M45G02, are an early configuration, and no parts are believed to be in service. These disks do not have rework procedures defined. Therefore the repetitive inspections remain for any disks that may still be in service.

The manufacturer developed a rework procedure for stage 1 HPT rotor disks, P/N 1862M23G01, to address cracks in the forward flange of the thermal shield by machining the profile of the slot bottom. A limited number of these disks were released to the field before the program was discontinued. These disks also do not have rework procedures defined because the chamfered breakedge rework machining was not developed for this limited number of parts.

We are considering additional rulemaking to add eddy current inspections of the bottom of the CF6–80A dovetail slots and the CF6–80A and CF6–80C2 chamfer surfaces to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness as part of the FAA's "enhanced-disk inspection initiative."

Relevant Service Information

We have reviewed and approved the technical contents of the following GE Service Bulletins (SBs) and Alert Service Bulletin (ASB) that describe procedures for removing, inspecting, and reworking certain stage 1 HPT rotor disks:

- SB No. CF6–80E1 S/B 72–0251, dated January 22, 2004;
- SB No. CF6–80A S/B 72–0779, Revision 1, dated January 22, 2004;
- SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003;
- ASB No. CF6–80C2 S/B 72-A1026, Revision 2, dated January 22, 2004;
- SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003.

Differences Between This AD and the Service Information

The differences between this AD and the service information are as follows:

- GE SB No. CF6–80A S/B 72–0779, Revision 1, dated January 22, 2004, applies to certain CF6–80A stage 1 HPT rotor disks and requires an initial inspection at next exposure. However, this AD requires only the stage 1 HPT rotor disks, P/N 9367M45G02, to have only an initial inspection at the next shop visit, subject to cycle limitations and subsequent repetitive inspections at each piece part exposure. This AD requires the other HPT rotor disks, to which the SB applies, to have the rework defined in SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003. This AD also requires the inspection of stage 1 HPT rotor disks, P/N 9367M45G02, which have zero cycles-since-new (CSN) before installation into the engine. The SB does not.
- GE ASB No. CF6–80C2 S/B 72–A1026, Revision 2, dated January 22, 2004, applies to certain CF6–80C2 stage 1 HPT rotor disks, and requires initial inspections of the stage 1 HPT rotor disks at the next shop visit. However, this AD requires only the stage 1 HPT rotor disks, P/N 1862M23G01, to have only an initial inspection at the next shop visit, subject to cycle limitations,

and subsequent repetitive inspections at each piece-part exposure. This AD requires the other HPT rotor disks, to which this ASB applies, to have the rework defined in SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003. The cycle limitations in the AD are based on the latest risk analysis for CF6–80A and CF6–80C2 engines where the ASB's cycle limitations are based on a risk analysis completed in 2001 for only CF6–80C2 engines. This AD also requires the inspection of stage 1 HPT rotor disks, P/N 1862M23G01, which have zero CSN before installation into the engine. The ASB does not.

- There are no differences between GE SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003, and GE SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003, and this AD except for the introduction of compliance cycle limitations.
- There are no differences between GE SB No. CF6–80E1 S/B 72–0251, dated January 22, 2004, and this AD.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF6–80 series turbofan engines of the same type design. We are issuing this AD to detect and prevent cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure. This AD requires rework of the dovetail slot bottom of certain stage 1 rotor disks. The disks must pass an inspection to qualify for the rework. Disks for which the rework has not been defined must continue to receive initial and repetitive inspections. In addition, this AD expands the population of affected engines and removes from service certain CF6–80E1 series disks. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–NE–05–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–NE–05–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by removing Amendment 39–12233 (66 FR 27592, May 18, 2001), and Amendment 39–13016 (68 FR 1519, January 13, 2003), and by adding a new airworthiness directive, Amendment 39–13488, to read as follows:

2004–04–07 General Electric Company: Amendment 39–13488. Docket No. 2004–NE–05–AD. Supersedes AD 2001–10–07, Amendment 39–12233, and AD 2003–01–05, Amendment 39–13016.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 12, 2004.

Affected ADs

(b) This AD supersedes AD 2001–10–07 and AD 2003–01–05.

Applicability

(c) This AD applies to the General Electric Company (GE) CF6–80 turbofan engine models listed in the following Table 1:

TABLE 1.—APPLICABILITY MODELS, PART NUMBERS, AIRPLANES

Models	Stage 1 high pressure turbine (HPT) rotor disk part Nos. (PNs)	Engines installed on but not limited to
CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3	9234M67G22/G24/G25/G26. 9362M58G02/G06/G07/G09. 9367M45G02/G04/G09.	Airbus A310 and Boeing 767 airplanes.
CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A8, CF6–80C2A5F, CF6–80C2B1, CF6–80C2B2, CF6–80C2B4, CF6–80C2B6, CF6–80C2B1F, CF6–80C2B2F, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F.	1862M23G01. 9392M23G10/G12/G21. 1531M84G02/G06/G08/G10.	Airbus A300, A310, Boeing 747, 767, and McDonnell Douglas MD11 airplanes.
CF6–80E1A2, CF6–80E1A4	1639M41P04	Airbus A330 airplanes.

These engines are installed on, but not limited to, the airplanes listed in Table 1 of this AD.

Unsafe Condition

(d) This AD results from the manufacturer's investigation and development of a rework procedure that chamfers the aft breakedge of the dovetail slot bottom. The actions specified in this AD are intended to detect and prevent cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

CF6–80A, –80A1, –80A2, and –80A3 Engines

Stage 1 HPT Rotor Disks, P/N 9362M58G09, With Chamfered Breakedges

(f) At the next piece-part exposure after the effective date of this AD, for stage 1 HPT rotor disks, P/N 9362M58G09, with SNs listed in Table 2 of this AD, do the following:

TABLE 2.—SNS OF CF6–80A SERIES STAGE 1 HPT ROTOR DISK P/N 9362M58G09—WITH CHAMFERED BREAKEDGES

GWN03RD7
GWN042J3
GWN04HRD
GWN04M9K

TABLE 2.—SNS OF CF6–80A SERIES STAGE 1 HPT ROTOR DISK P/N 9362M58G09—WITH CHAMFERED BREAKEDGES—Continued

GWN03TKG
GWN04FW2
GWN04HRE
GWN04M9L
GWN03TKH
GWN04FW3
GWN04HRF
GWN04M9M
GWN03TKJ
GWN04FW4
GWN04HRG
GWN04M9R
GWN03W3M
GWN04FW5
GWN04HRH
GWN04M9T
GWN03W3N
GWN04H0M
GWN04K8N
GWN04M9W
GWN03W3R
GWN04HRA
GWN04M9J

(1) Visually inspect the rotor disks for the presence of a chamfer on the aft breakedges of the dovetail slot bottoms. Use paragraph 3.A. of GE Service Bulletin (SB) No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003, to do the inspection.

(2) For disks that have the chamfered breakedges, remark, fluorescent penetrant inspect (FPI), and eddy current inspect (ECI) the rotor disk. Use paragraph 3.A.(1)(a) through 3.A.(1)(b) of the Accomplishment Instructions of GE SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003, to remark and inspect the rotor disk and remove from service as necessary.

(3) For disks that do not have the chamfered breakedges, inspect, rework and remark the rotor disk. Use paragraph 3.A(2)(a) through 3.A(2)(b) of the Accomplishment Instructions of GE SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003, to inspect, rework, and remark the disk and remove from service as necessary.

Stage 1 HPT Rotor Disks, P/Ns 9234M67G22, G24, G25, G26, 9367M45G04, G09, 9362M58G02, G06, G07, and 9362M58G09 With SNs Not Listed in Table 2 of This AD

(g) For stage 1 HPT rotor disks, P/Ns 9234M67G22, G24, G25, G26, 9367M45G04, G09, 9362M58G02, G06, G07, and 9362M58G09 with SNs not listed in Table 2 of this AD, inspect, rework, and remark the disks using paragraphs 3.A.(2) through 3.B.(2) of Accomplishment Instructions of GE SB No. CF6–80A S/B 72–0788, Revision 2, dated December 17, 2003, at the following:

(1) For stage 1 HPT rotor disks not installed in engines with both new and old hardware, inspect, rework, remark, and remove from service as necessary before further flight.

(2) For stage 1 HPT rotor disks that have been inspected before the effective date of this AD using any version of GE SB No. CF6–80A S/B 72–0779, inspect, rework, remark, and remove from service as necessary at the next Engine Shop Visit (ESV) using the compliance times in the following Table 3:

TABLE 3.—COMPLIANCE TIMES FOR INSPECTION AND REWORK OF CF6–80A SERIES STAGE 1 HPT ROTOR DISKS, P/NS 9234M67G22, G24, G25, G26, 9367M45G04, G09, 9362M58G02, G06, G07, AND 9362M58G09 WITH SNS NOT LISTED IN TABLE 2 OF THIS AD—PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk cycles-since-last-inspection (CSLI) on the effective date of this AD	Compliance time for inspection and rework
(i) More than 1,500 CSLI	At the next ESV after the effective date of this AD, but not to exceed 4,500 CSLI.
(ii) 1,500 CSLI or fewer	At the next ESV after the effective date of this AD, but not to exceed 3,500 CSLI.

(3) For stage 1 HPT rotor disks that have not been inspected before the effective date of this AD using any version of GE SB No. CF6–80A S/B 72–0779, inspect, rework, remark, and remove from service as necessary at the next ESV using the compliance times in the following Table 4:

TABLE 4. COMPLIANCE TIMES FOR INSPECTION AND REWORK OF CF6–80A SERIES STAGE 1 HPT ROTOR DISKS, P/NS 9234M67G22, G24, G25, G26, 9367M45G04, G09, 9362M58G02, G06, G07, AND 9362M58G09 WITH SNS NOT LISTED IN TABLE 2 OF THIS AD—NOT PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk cycles-since-new (CSN) on the effective date of this AD	Compliance time for inspection and rework
(i) 10,000 or more CSN	At the next ESV or within 1,000 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.
(ii) 5,000 or more CSN but fewer than 10,000 CSN	At the next ESV or within 2,400 CIS after the effective date of this AD, whichever occurs first, but before accumulating 11,000 CSN.
(iii) Fewer than 5,000 CSN	At the next ESV or within 3,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 7,400 CSN.

Stage 1 HPT Rotor Disks, P/N 9367M45G02

(h) For stage 1 HPT rotor disks, P/N 9367M45G02, inspect the rotor disk dovetail slot bottoms and remove the disk from service as necessary using paragraphs 3.A. through 3.C.(10)(i) of Accomplishment Instructions of GE SB No. CF6–80A S/B 72–0779, Revision 1, dated January 22, 2004, at the following times:

(1) For stage 1 HPT rotor disks not installed in engines with both new and old hardware, inspect and remove from service as necessary before further flight.

(2) For stage 1 HPT rotor disks that have been inspected before the effective date of this AD using any version of GE SB No. CF6–80A S/B 72–0779, and had more than zero CSN at the time of that inspection, inspect and remove from service as necessary at each piece-part exposure.

(3) For stage 1 HPT rotor disks that have not been inspected, or were only inspected with zero CSN before the effective date of this AD using any version of GE SB No. CF6–80A S/B 72–0779, inspect and remove from service as necessary at the next ESV using the compliance times in the following Table 5:

TABLE 5. COMPLIANCE TIMES FOR INSPECTION OF CF6–80A SERIES STAGE 1 HPT ROTOR DISKS, P/N 9367M45G02—NOT PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk CSN on the effective date of this AD	Compliance time for initial inspection
(i) 10,000 or more CSN	At the next ESV or within 1,000 CIS after the effective date of this AD, whichever occurs first.
(ii) 5,000 or more CSN but fewer than 10,000 CSN	At the next ESV or within 2,400 CIS after the effective date of this AD, whichever occurs first, but before accumulating 11,000 CSN.
(iii) Fewer than 5,000 CSN	At the next ESV or within 3,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 7,400 CSN.

(4) Thereafter, inspect at each piece-part exposure, and remove the rotor disk from service if necessary.

CF6–80C2 Series Engines

Stage 1 HPT Rotor Disks, P/N 1531M84G10, With Chamfered Breakedges

(i) At the next piece-part exposure after the effective date of this AD, for stage 1 HPT rotor disks, P/N 1531M84G10, with SNs listed in Table 6 of this AD, do the following:

TABLE 6.—SNS OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES

GWN03111
GWN0369J
GWN03K3F
GWN03RPD
GWN049JM
GWN03114
GWN036JG
GWN03K3G
GWN03RPE
GWN049M7
GWN03501
GWN036JH
GWN03K3H
GWN03RPF
GWN049M8
GWN03699
GWN036JJ

TABLE 6.—SNS OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN03K3K
GWN03RPG
GWN049M9
GWN03752
GWN036JK
GWN03K3L
GWN0402A
GWN04AEP
GWN03753
GWN036JL
GWN03K3M
GWN0402E
GWN04AER
GWN03754
GWN036JM
GWN03K3N
GWN0402F
GWN04AET
GWN03755
GWN036JN
GWN03K3R
GWN0402G
GWN04ALR
GWN03756
GWN0375A
GWN03K3T
GWN0402H
GWN04ALT
GWN03757
GWN0375C

TABLE 6.—SNS OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN03K3W
GWN0402J
GWN04ALW
GWN03759
GWN0375D
GWN03K40
GWN0402K
GWN04AM0
GWN03981
GWN0375E
GWN03K6J
GWN0402L
GWN04AM1
GWN03982
GWN037H2
GWN03K7R
GWN0402M
GWN04AM2
GWN03983
GWN0398A
GWN03K7T
GWN0402N
GWN04AM3
GWN03984
GWN0398C
GWN03KR1
GWN0402P
GWN04AM4
GWN03985
GWN039PF

TABLE 6.—SNs OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN03KR2
GWN040R5
GWN04CGJ
GWN03986
GWN039PG
GWN03KR3
GWN0418A
GWN04CGL
GWN03987
GWN039PH
GWN03KR4
GWN0418C
GWN04CGN
GWN03988
GWN039PJ
GWN03KR5
GWN0418D
GWN04CGT
GWN03989
GWN039PK
GWN03KR6
GWN0418E
GWN04CGW
GWN04026
GWN039PL
GWN03KR7
GWN0418F
GWN04CH3
GWN04027
GWN039PM
GWN03KR8
GWN0418G
GWN04CH5
GWN04028
GWN039PN
GWN03KRA
GWN0418H
GWN04CH8
GWN04029
GWN03A4J
GWN03KRC
GWN0418J
GWN04CH9
GWN04189
GWN03A4K
GWN03KRD
GWN0418K
GWN04CHA
GWN04190
GWN03A4L
GWN03L2D
GWN0418L
GWN04CHC
GWN04191
GWN03A4M
GWN03L2E
GWN0418M
GWN04D52
GWN04366
GWN03A4N
GWN03L2F
GWN0418N
GWN04D54
GWN04722
GWN03A4P
GWN03LNF
GWN0418P
GWN04D55
GWN04726
GWN03A4R
GWN03LNJ

TABLE 6.—SNs OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN0418R
GWN04D56
GWN04729
GWN03A4T
GWN03LNK
GWN0418T
GWN04D57
GWN031N2
GWN03A4W
GWN03M88
GWN0418W
GWN04D58
GWN031N3
GWN03C12
GWN03M89
GWN044DP
GWN04D59
GWN031N4
GWN03C13
GWN03M8C
GWN0454E
GWN04DPW
GWN031N5
GWN03C14
GWN03M8D
GWN0454F
GWN04DR4
GWN031N6
GWN03CA0
GWN03M8E
GWN0454G
GWN04DR9
GWN031N7
GWN03DC9
GWN03M8F
GWN0454H
GWN04DRE
GWN031N8
GWN03DCA
GWN03M8J
GWN0454J
GWN04DRJ
GWN031N9
GWN03DCC
GWN03M8K
GWN0454K
GWN04E9K
GWN031NA
GWN03DCD
GWN03NHN
GWN0454L
GWN04E9L
GWN031NC
GWN03DCE
GWN03NHP
GWN0454M
GWN04E9M
GWN032G1
GWN03DCF
GWN03NHR
GWN0454N
GWN04E9N
GWN032G2
GWN03DCG
GWN03NHT
GWN045T0
GWN04EM5
GWN032G3
GWN03DCH
GWN03R73
GWN045T1

TABLE 6.—SNs OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN04EMA
GWN032G4
GWN03DCJ
GWN03R74
GWN045T2
GWN04EMK
GWN032G5
GWN03DCK
GWN03R75
GWN045T3
GWN04EML
GWN032G6
GWN03DCL
GWN03R76
GWN045T4
GWN04EMM
GWN032G7
GWN03DCM
GWN03R77
GWN045T5
GWN04F8N
GWN032G8
GWN03DCN
GWN03R78
GWN045T6
GWN04F8P
GWN032G9
GWN03DCP
GWN03R79
GWN045T7
GWN04FTJ
GWN032GE
GWN03DCR
GWN03R7A
GWN045T8
GWN04FTL
GWN0335P
GWN03DME
GWN03R7C
GWN045T9
GWN04FTM
GWN0335R
GWN03DMF
GWN03R7D
GWN045TA
GWN04FTN
GWN033C5
GWN03ER7
GWN03R7E
GWN045TC
GWN034KR
GWN03ER8
GWN03R7F
GWN045TD
GWN034KT
GWN03ER9
GWN03R7G
GWN045TE
GWN0350M
GWN03ERA
GWN03R7H
GWN045TF
GWN0350N
GWN03FTN
GWN03R9G
GWN045TG
GWN0350P
GWN03FTP
GWN03R9H
GWN045TH
GWN0350R

TABLE 6.—SNs OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN03FTR
GWN03R9J
GWN046F6
GWN0350T
GWN03FTT
GWN03R9K
GWN046F7
GWN0350W
GWN03FTW
GWN03R9L
GWN046F8
GWN035M5
GWN03FW0
GWN03R9M
GWN047LG
GWN035M6
GWN03H56
GWN03R9N
GWN047LH
GWN035M7
GWN03H57
GWN03R9P
GWN047LJ
GWN035M8
GWN03H58
GWN03R9R
GWN047LK
GWN035M9
GWN03HTL
GWN03R9T
GWN047LL
GWN035MA
GWN03HTM
GWN03R9W
GWN048CD
GWN035MC
GWN03HTN
GWN03RA0
GWN048CF
GWN035MD
GWN03HTP
GWN03RA1
GWN048CG
GWN035TH
GWN03HTR

TABLE 6.—SNs OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1531M84G10, WITH CHAMFERED BREAKEDGES—Continued

GWN03RA2
GWN048CH
GWN035TJ
GWN03HTT
GWN03RA3
GWN048CJ
GWN035TK
GWN03J8T
GWN03RA4
GWN048CK
GWN035TL
GWN03J8W
GWN03RA5
GWN048CM
GWN035TM
GWN03J90
GWN03RA6
GWN048CN
GWN0369A
GWN03J91
GWN03RA7
GWN048CP
GWN0369C
GWN03J92
GWN03RA8
GWN048CR
GWN0369D
GWN03JNN
GWN03RP7
GWN049GH
GWN0369E
GWN03JNP
GWN03RP9
GWN049GJ
GWN0369G
GWN03K3C
GWN03RPA
GWN049GK
GWN0369H
GWN03K3D
GWN03RPC
GWN049JL

(1) Visually inspect the rotor disks for the presence of a chamfer on the aft breakedges of the dovetail slot bottoms. Use paragraph 3.A. of GE SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003, to do the inspection.

(2) For disks that have the chamfered breakedges, remark, FPI, and ECI the rotor disk. Use paragraph 3.A.(1)(a) through 3.A.(1)(b) of the Accomplishment Instructions of GE SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003, to remark and inspect the rotor disk, and remove from service as necessary.

(3) For disks that do not have the chamfered breakedges, inspect, rework and remark the rotor disk. Use paragraph 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GE SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003, to inspect, rework and remark the disk and remove from service as necessary.

Stage 1 HPT Rotor Disks, P/Ns 9392M23G10, G12, G21, 1531M84G02, G06, G08, and 1531M84G10 With SNs Not Listed in Table 6 of This AD

(j) For stage 1 HPT rotor disks, P/Ns 9392M23G10, G12, G21, 1531M84G02, G06, G08, and 1531M84G10 with SNs not listed in Table 6 of this AD, inspect, rework, and remark the disks using paragraphs 3.A.(2) through 3.B.(2) of Accomplishment Instructions of GE SB No. CF6–80C2 S/B 72–1089, Revision 2, dated December 18, 2003, at the following:

(1) For stage 1 HPT rotor disks not installed in engines with both new and old hardware, inspect, rework, remark, and remove from service as necessary before further flight.

(2) For stage 1 HPT rotor disks that have been inspected before the effective date of this AD using GE SB No. CF6–80C2 S/B 72–A1024, Revision 1, dated November 3, 2000, or any version of GE ASB No. CF6–80C2 S/B 72–A1026, inspect, rework, remark, and remove from service as necessary at the next ESV using the compliance times in the following Table 7:

TABLE 7.—COMPLIANCE TIMES FOR INSPECTION AND REWORK OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/NS 9392M23G10, G12, G21, 1531M84G02, G06, G08, AND 1531M84G10 WITH SNS NOT LISTED IN TABLE 6 OF THIS AD—PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk cycles-since-inspection (CSI) on the effective date of this AD	Compliance time for inspection and rework
(i) More than 1,500 CSLI	At the next ESV or within 4,500 CSLI after the effective date of this AD, whichever occurs first.
(ii) 1,500 CSLI or fewer	At the next ESV or within 3,500 CSLI after the effective date of this AD, whichever occurs first.

(3) For stage 1 HPT rotor disks that have not been inspected before the effective date of this AD using GE SB No. CF6–80C2 S/B 72–A1024, Revision 1, dated November 3, 2000, or any version of GE ASB No. CF6–80C2 S/B 72–A1026, inspect, rework, remark, and remove from service as necessary at the next ESV using the compliance times in the following Table 8:

TABLE 8.—COMPLIANCE TIMES FOR INSPECTION AND REWORK OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/NS 9392M23G10, G12, G21, 1531M84G02, G06, G08, AND 1531M84G10 WITH SNS NOT LISTED IN TABLE 6 OF THIS AD—NOT PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk cycles-since-new (CSN) on the effective date of this AD	Compliance time for inspection and rework
(i) 10,000 or more CSN	At the next ESV or within 1,000 CIS after the effective date of this AD, whichever occurs first.
(ii) 5,000 or more CSN but fewer than 10,000 CSN	At the next ESV or within 2400 CIS after the effective date of this AD, whichever occurs first, but before accumulating 11,000 CSN
(iii) Fewer than 5,000 CSN.	At the next ESV or within 3,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 7,400 CSN.

Stage 1 HPT Rotor Disks, P/N 1862M23G01

(k) For stage 1 HPT rotor disk, P/N 1862M23G01, inspect the rotor disk dovetail slot bottoms and remove the disk from service as necessary using paragraphs 3.A. through 3.C.(10)(i) of Accomplishment Instructions of GE ASB No. CF6–80C2 S/B 72–A1026, Revision 2, dated January 22, 2004, at the following times:

(1) For stage 1 HPT rotor disks not installed in engines with both new and old hardware, inspect and remove from service as necessary before further flight.

(2) For stage 1 HPT rotor disks that have been inspected before the effective date of this AD using any version of GE ASB No. CF6–80C2 S/B 72–A1026, and had more than zero CSN at the time of that inspection, inspect and remove from service as necessary at each piece-part exposure.

(3) For stage 1 HPT rotor disks that have not been inspected, or were only inspected with zero CSN before the effective date of this AD using any version of GE ASB No. CF6–80C2 S/B 72–A1026, inspect and remove from service as necessary at the next ESV using the compliance times in the following Table 9:

TABLE 9.—COMPLIANCE TIMES FOR INSPECTION OF CF6–80C2 SERIES STAGE 1 HPT ROTOR DISKS, P/N 1862M23G01—NOT PREVIOUSLY INSPECTED

Stage 1 HPT rotor disk CSN on the effective date of this AD	Compliance time for initial inspection
(i) 10,000 or more CSN	At the next ESV or within 1,000 CIS after the effective date of this AD, whichever occurs first.
(ii) 5,000 or more CSN but fewer than 10,000 CSN	At the next ESV or within 2,400 CIS after the effective date of this AD, whichever occurs first, but before accumulating 11,000 CSN.
(iii) Fewer than 5,000 CSN	At the next ESV or within 3,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 7,400 CSN.

(4) Thereafter, inspect at each piece-part exposure, and remove the rotor disk from service if necessary.

CF6–80E1A2, A4 Engines

Stage 1 HPT Rotor Disks, P/N 1639M41P04

(l) For stage 1 HPT rotor disks, P/N 1639M41P04, remove the rotor disks from service using paragraphs 3.A.(1) through 3.A.(2) of Accomplishment Instructions of GE SB No. CF6–80E1 S/B 72–0251, dated January 22, 2004, at the following times:

(1) For stage 1 HPT rotor disks currently in service, remove the disk using the compliance times in the following Table 10:

TABLE 10.—COMPLIANCE TIMES FOR REMOVAL OF CF6–80E1 STAGE 1 HPT ROTOR DISKS, P/N 1639M41P04

Stage 1 HPT rotor disk CSN on the effective date of this AD	Compliance time for removal of disk
(i) More than 10,000 CSN	At the next ESV or within 600 CIS after the effective date of this AD, whichever occurs first.
(ii) More than 5,000 CSN but fewer than or equal to 10,000 CSN	At the next ESV or within 2,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 10,600 CSN.
(iii) Fewer than or equal to 5,000 CSN	At the next ESV or within 3,500 CIS after the effective date of this AD, whichever occurs first, but before accumulating 7,500 CSN.

(2) After the effective date of this AD, do not install any stage 1 HPT rotor disk, P/N 1639M41P04, into any engine.

Definitions

(m) For the purpose of this AD, the following definitions apply:

(1) An engine shop visit (ESV) is defined as the removal of an engine from an aircraft for maintenance in which a major engine flange is disassembled after the effective date of this AD. The following actions, either separately or in combination with each other, are not considered ESVs for the purpose of this AD.

(i) The removal of the upper compressor stator case solely for airfoil maintenance.

(ii) The module level inspection of the high-pressure compressor rotor 3–9 spool.

(iii) The replacement of stage 5 high-pressure compressor variable stator vane bushings or lever arms.

(2) Piece-part exposure is defined as when:

(i) The stage 1 HPT rotor disk is considered completely disassembled according to the manufacturer's engine manual or other FAA-approved engine manual; and

(ii) The disk has accumulated more than 100 cycles-in-service since the last piece-part inspection, provided that the part was not damaged or the disassembly is not related to the cause for its removal from the engine.

Reporting Requirements

(n) Within five calendar days of the inspection, report the results of inspections that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number

2120–0056. Be sure to include the following information:

(1) Engine model in which the stage 1 HPT rotor disk was installed.

(2) Part Number.

(3) Serial Number.

(4) Part CSN.

(5) Part CSLI.

(6) Date and location where inspection was done.

(o) We recommend that you record the inspection information and results on GE Form 1653–1, entitled CF6–80A/80C Stage 1 HPT Disk Dovetail Slot Bottom Inspection. This form is available in any version of GE SB CF6–80A S/B 72–0779, or GE ASB CF6–80C2 S/B 72–A1026. We also recommend that a copy of the data be sent to GE Airline Support Engineering, General Electric Aircraft Engines, Customer Support Center, 1 Neumann Way, Mail Drop RM285, Cincinnati, OH, 45215.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(q) You must use the service information specified in Table 11 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 11 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Table 11 follows:

TABLE 11.—INCORPORATION BY REFERENCE

Service bulletin no.	Page	Revision	Date
GE SB No. CF6–80E1 S/B 72–0251 Total Pages: 4	All ...	Original	January 22, 2004.
GE SB No. CF6–80A S/B 72–0779 Total Pages: 34	All ...	1	January 22, 2004.
GE SB No. CF6–80A S/B 72–0788 Total Pages: 10	All ...	2	December 17, 2003.
GE ASB No. CF6–80C2 S/B 72–A1026 Total Pages: 38	All ...	2	January 22, 2004.
GE SB No. CF6–80C2 S/B 72–1089 Total Pages: 11	All ...	2	December 18, 2003.

Related Information

(r) GE SB No. CF6–80C2 S/B 72–A1024, Revision 1, dated November 3, 2000 also pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on February 13, 2004.

Peter A. White,

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

[FR Doc. 04–3798 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–28–AD; Amendment 39–13489; AD 2004–04–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to advise the flightcrew that Category IIIB autoland operations are prohibited and to warn the flightcrew of the potential for reversion of the primary flight control system to direct mode during takeoff or landing and its associated airplane effects. This AD also requires installation of a placard in the flight deck. This action also provides an optional terminating action for the AFM revision and placard installation. This action is necessary to prevent the possibility of the airplane departing the runway during Category IIIB autoland operations due to autopilot disconnect in low visibility weather conditions, and to warn the flightcrew of the potential for autopilot disconnect or unscheduled speed brake retraction during any landing, which could result in a departure from the runway. This action is intended to address the identified unsafe conditions.

DATES: Effective February 26, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–28–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-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2004–NM–28–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.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6479; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, during a test flight performed by the airplane manufacturer, a single primary flight computer (PFC) reset on a Boeing Model 777–300ER series airplane. The primary flight control system (PFCS) includes three PFCs, called channels. As a result of analyzing the data from the test flight, the airplane manufacturer was able to reproduce single, dual, and triple channel resets during lab testing of takeoff and landing scenarios. A triple channel reset forces the PFCS

from normal mode into direct mode. Reversion to direct mode during autoland disconnects the autopilot. During Category IIIB autoland operations, loss of automatic rollout control in low visibility weather conditions could result in the airplane departing from the runway.

Additionally, if the PFCS reverts to direct mode after automatic speed brake deployment during any landing, the speed brakes will retract. If this occurs, the flightcrew must manually deploy the speed brakes. Unscheduled speed brake retraction during landing could result in a runway overrun, particularly if stopping distance is critical.

The PFC hardware and software configuration on Model 777–300ER series airplanes are identical to those on the affected Model 777–200 series airplanes (PFC hardware, part number (P/N) S251W700–103, and software, P/N 2769–PFC–900–00). Therefore, the affected Model 777–200 series airplanes may be subject to the same unsafe conditions. Model 777–300ER series airplanes are not yet type certificated; therefore, these airplanes are not subject to AD rulemaking. The airplane manufacturer is planning to revise the software of the PFCs on these airplanes before certification.

Explanation of Relevant Service Information

The FAA has reviewed TASKS 27–02–01–400–803, 27–02–01–000–801, and 27–02–01–400–802 of Chapter 27–02–01 of Boeing 777 Airplane Maintenance Manual (AMM), Document Number D633W101. The AMM describes procedures for removing all three existing PFCs having hardware P/N S251W700–103 and software P/N 2769–PFC–900–00, and installing serviceable PFCs having hardware P/N S251W700–102 and software P/N 2763–PFC–740–00. Accomplishment of the actions specified in the AMM is intended to adequately address the identified unsafe conditions.

Explanation of the Requirements of the Rule

Since unsafe conditions have been identified that are likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD requires a revision to the Airplane Flight Manual (AFM) to (1) advise the flightcrew that Category IIIB autoland operations are prohibited and (2) warn the flightcrew of the potential for reversion of the PFCS to direct mode during takeoff or landing and its associated airplane effects. This AD also requires installation of a placard in the flight deck. This AD also provides an optional terminating action for the AFM revision and placard installation. The optional terminating action is required to be accomplished in accordance with the AMM described previously.

Interim Action

The AFM revision and placard required by this AD may be removed upon installation of PFC hardware, P/N S251W700–102, and software, P/N 2763–PFC–740–00, in all three PFCs. This PFC hardware/software configuration has been previously certified for Model 777 series airplanes. Boeing is currently developing new PFC hardware/software configurations, but we have not yet certified them. We may consider further rulemaking once these new hardware/software configurations have been certified.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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 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 rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–28–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–04–08 Boeing: Amendment 39–13489. Docket 2004–NM–28–AD.

Applicability: Model 777–200 series airplanes, variable numbers WC381 through WC385 inclusive, WC446, and WC447; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of the airplane departing the runway during Category IIIB autoland operations due to autopilot disconnect in low visibility weather conditions, and to warn the flightcrew of the potential for autopilot disconnect or unscheduled speed brake retraction during any landing, which could result in a departure from the runway; accomplish the following:

Revision of the Airplane Flight Manual (AFM) and Installation of a Placard

(a) Within 1 day after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the AFM to include the following statement (this may be accomplished by inserting a copy of this AD into the AFM):

"CERTIFICATE LIMITATIONS

CAT IIIB autoland prohibited.

WARNING

The PFCS may revert to direct mode during takeoff or landing. If reversion to direct mode occurs during autoland, the autopilot will disconnect. In this situation, the flightcrew must immediately take control of the airplane and provide manual rollout control.

WARNING

If the PFCS reverts to direct mode after the speed brakes have been deployed during landing rollout, the speed brakes will retract. If this occurs, the flightcrew must manually deploy the speed brakes to preserve stopping performance."

(2) Install a warning placard in the flight deck in the Captain's primary field of view that reads as follows:

"CAT IIIB AUTOLAND PROHIBITED."

Optional Terminating Action

(b) Remove all three existing PFCs, having hardware part number (P/N) S251W700–103 and software P/N 2769–PFC–900–00, and install serviceable PFCs having hardware P/N S251W700–102 and software P/N 2763–PFC–740–00; in accordance with TASKS 27–02–01–400–803, 27–02–01–000–801, and 27–02–01–400–802 of Chapter 27–02–01 of Boeing 777 Airplane Maintenance Manual, Document Number D633W101. After accomplishing the removal and installation, the AFM revision and placard required by paragraph (a) of this AD may be removed.

Special Flight Permit

(c) Special flight permits (14 CFR 21.197 and 21.199) are not allowed.

Alternative Methods of Compliance

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

Effective Date

(e) This amendment becomes effective on February 26, 2004.

Issued in Renton, Washington, on February 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4258 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30405; Amdt. No. 3090]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 26, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 26, 2004.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR part 97:

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

Issued in Washington, DC on February 13, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective April 15, 2004*

Marina, CA, Marina Muni, VOR RWY 29, Orig, CANCELLED
Denver, CO, Denver Intl, RNAV (GPS) RWY 34L, ORIG–A
Denver, CO, Denver Intl, RNAV (GPS) RWY 16R, ORIG–A
Denver, CO, Denver Intl, ILS OR LOC RWY 16R, ORIG–A
Denver, CO, Denver Intl, ILS OR LOC RWY 34L, ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), ORIG–A
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 8, Orig
Fort Lauderdale, FL, Fort Lauderdale Executive, VOR/DME RNAV OR GPS RWY 8, Orig
Orlando, FL, Orlando Sanford, ILS OR LOC RWY 9L, Amdt 2
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 36L, Orig
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 18R, Orig
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 18L, Orig
Vidalia, GA, Vidalia Regional, RNAV (GPS) RWY 24, Orig
Indianapolis, IN, Indianapolis Intl, RADAR–1, Amdt 31A, CANCELLED
Johnson, KS, Stanton County Muni, RNAV (GPS) RWY 17, Orig
Johnson, KS, Stanton County Muni, RNAV (GPS) RWY 35, Orig
Orange, MA, Orange Muni, GPS RWY 32, Orig–D
Tupelo, MS, Tupelo Regional, ILS OR LOC RWY 36, Amdt 7C
Minot, ND, Minot Intl, ILS RWY 31, Amdt 9B
Minot, ND, Minot Intl, LOC BC RWY 13, Amdt 7
Minot, ND, Minot Intl, VOR RWY 13, Amdt 11
Minot, ND, Minot Intl, VOR RWY 31, Amdt 11
Minot, ND, Minot Intl, RNAV (GPS) RWY 13, Orig
Truth or Consequences, NM, Truth or Consequences Muni, RNAV (GPS)–A, Orig
Truth or Consequences, NM, Truth or Consequences Muni, GPS RWY 31, Orig–B, CANCELLED
Battle Mountain, NV, Battle Mountain, VOR–A, Amdt 4
Battle Mountain, NV, Battle Mountain, VOR/DME RWY 3, Amdt 5
Battle Mountain, NV, Battle Mountain, GPS RWY 3, Orig, CANCELLED
Battle Mountain, NV, Battle Mountain, RNAV (GPS) RWY 3, Orig
Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 30, Orig–A
Georgetown, OH, Brown County, RNAV (GPS) RWY 35, Orig
Georgetown, OH, Brown County, GPS RWY 35, Orig, CANCELLED
Hamilton, OH, Butler County Regional, LOC RWY 29, Amdt 1, CANCELLED
Hamilton, OH, Butler County Regional, ILS OR LOC RWY 29, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Amdt 1A
Allentown, PA, Lehigh Valley International, RNAV (GPS) Y RWY 6, Orig
Allentown, PA, Lehigh Valley International, RNAV (GPS) Z RWY 6, Orig
Allentown, PA, Lehigh Valley International, RNAV (GPS) Z RWY 13, Orig
Allentown, PA, Lehigh Valley International, RNAV (GPS) Y RWY 13, Orig
Allentown, PA, Lehigh Valley International, RNAV (GPS) RWY 24, Orig
Allentown, PA, Lehigh Valley International, RNAV (GPS) RWY 31, Orig
Allentown, PA, Lehigh Valley International, ILS OR LOC RWY 6, Amdt 22
Allentown, PA, Lehigh Valley International, ILS OR LOC RWY 13, Amdt 6
Allentown, PA, Lehigh Valley International, NDB RWY 6, Amdt 18
Allentown, PA, Lehigh Valley International, GPS RWY 24, Orig, CANCELLED
Galveston, TX, Scholes Intl At Galveston, ILS OR LOC RWY 13, Amdt 10A
Moab, UT, Canyonlands Field, VOR–A, Amdt 10
Moab, UT, Canyonlands Field, RNAV (GPS) RWY 3, Orig
Moab, UT, Canyonlands Field, GPS RWY 3, Orig, CANCELLED

Janesville, WI, Southern Wisconsin Regional, VOR RWY 4, Amdt 27
Janesville, WI, Southern Wisconsin Regional, VOR/DME RWY 22, Amdt 1
Janesville, WI, Southern Wisconsin Regional, RNAV (GPS) RWY 4, Orig
Janesville, WI, Southern Wisconsin Regional, RNAV (GPS) RWY 14, Orig
Janesville, WI, Southern Wisconsin Regional, RNAV (GPS) RWY 22, Orig
Janesville, WI, Southern Wisconsin Regional, RNAV (GPS) RWY 32, Orig
Sparta, WI, Sparta/Fort McCoy, NDB RWY 29, Amdt 3
Sparta, WI, Sparta/Fort McCoy, RNAV (GPS) RWY 11, Orig
Sparta, WI, Sparta/Fort McCoy, RNAV (GPS) RWY 29, Orig
Sparta, WI, Sparta/Fort Mc Coy, GPS RWY 11, Amdt 1A, CANCELLED
Sparta, WI, Sparta/Fort Mc Coy, GPS RWY 29, Amdt 1A, CANCELLED

[FR Doc. 04–4172 Filed 2–25–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–096]

RIN 1625–AA09

Drawbridge Operation Regulations: Rahway River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the Conrail Bridge, at mile 2.0, across the Rahway River at Linden, New Jersey. This change to the drawbridge operation regulations will allow the bridge to be operated from a remote location. This action is expected to allow the bridge owner to operate the bridge from a remote location while still providing for the reasonable needs of navigation.

DATES: This rule is effective March 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–096) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 14, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Rahway River, New Jersey, in the **Federal Register** (68 FR 59143). We received one comment letter in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Conrail Bridge has a vertical clearance of 6 feet at mean high water and 11 feet at mean low water in the closed position.

The existing drawbridge operation regulations listed at 33 CFR 117.743, require the bridge to open on signal from April 1 through November 30, from 6 a.m. to 10 p.m. At all other times, the bridge shall open on signal if at least a four-hour notice is given.

The Conrail Bridge across the Rahway River is navigated predominately by small recreational vessels April through November.

The owner of the bridge, Consolidated Rail Corporation (Conrail), requested a change to the drawbridge operation regulations to allow the bridge to be operated from a remote location by a bridge/train dispatcher located at the Conrail Dispatch Office at Mount Laurel, New Jersey. The bridge will still operate the same; except, it will be done from a remote location. The on-scene bridge tender will be eliminated by this rulemaking.

It is expected that this final rule will relieve the bridge owner of the burden of crewing the bridge at all times while still meeting the reasonable needs of navigation.

Discussion of Comments and Changes

The Coast Guard received one comment letter in response to the notice of proposed rulemaking. The comment letter was in objection to the proposed rule change stating that not having a drawtender in attendance at the bridge would not allow for the timely discovery of any conditions that may cause the bridge to become inoperative.

The bridge owner is required under 33 CFR 117.7 to keep the bridge in good operable condition at all times and to test the bridge operation at sufficient intervals to assure satisfactory operation. The Coast Guard believes that it is not necessary to keep the bridge crewed at all times and that the bridge owner's preventative maintenance schedule is sufficient to assure reliable operation of the bridge. As a result of the above, no changes have been made to this final rule.

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).

This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times, except for the passage of rail traffic.

Small Entities

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

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times, except for the passage of rail traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.743 is revised to read as follows:

§ 117.743 Rahway River.

The draw of the Conrail Bridge, mile 2.0, across the Rahway River, at Linden, New Jersey, shall operate as follows:

(a) The draw shall remain in the full open position at all times, and shall only be closed for the passage of rail traffic or the performance of maintenance authorized in accordance with subpart A of this part.

(b) The draw shall be remotely operated by a bridge/train dispatcher located at the Conrail Dispatch Office at Mount Laurel, New Jersey.

(c) A marine traffic light system shall be maintained at the bridge and display flashing green lights to indicate that vessels may pass through the bridge, and flashing red lights anytime the bridge is not in the full open position.

(d) An infrared sensor system shall be maintained at the bridge to determine that no conflict with vessel traffic exists while the bridge is closing.

(e) Before the bridge may be closed from the remote location, an on-site train crewmember shall observe the waterway for any vessel traffic. All approaching vessels shall be allowed to pass before the bridge may close. The on-scene train crewmember shall then communicate with the bridge/train dispatcher at the Conrail Dispatch Office, at Mount Laurel, either by radio or telephone, to request that the bridge be closed.

(f) While the bridge is moving from the full open to full closed position, the bridge/train dispatcher shall maintain constant surveillance of the navigational channel at the bridge using the infrared sensor system.

(g) If the infrared sensors detect a vessel or other obstruction approaching or under the bridge before the draw is fully lowered and locked, the closing sequence shall be stopped, automatically, and the draw shall be raised to its full open position until the channel is clear.

(h) During the downward bridge closing movement, the marine traffic light system located at the bridge will change from flashing green to flashing red, the public address system shall announce that the bridge shall be closing, and the horn shall sound two times, pause 10 seconds, then repeat two horn blasts until the bridge is seated and fully locked down.

(i) When all rail traffic has cleared the bridge, the bridge/train dispatcher shall sound the horn five-times to signal that the draw is about to open.

(j) In the event of a failure, or obstruction to the infrared sensor system, the bridge shall immediately be returned to the full open position until the problem is corrected.

(k) In the event of a loss of communication between the on-site personnel and the bridge/train dispatcher, the bridge shall immediately be returned to the full open position until the problem is corrected.

(l) Should the draw become inoperable from the remote site while

the bridge is in the closed position, a bridge tender, maintenance personnel, or engineer shall be deployed to be on scene within one hour from the time the draw becomes inoperable until the bridge can be returned to the full open position.

(m) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes after a train has crossed the bridge; except, as provided in 33 CFR 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge, the train may continue across the bridge and must clear the bridge interlocks before stopping.

Dated: February 13, 2004.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–4207 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–027]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has approved a temporary deviation from the regulations governing the operation of the S.R. 74 Bridge across the Atlantic Intracoastal Waterway mile 283.1, at Wrightsville Beach, NC. This deviation allows this double-leaf drawbridge to provide half-leaf openings for vessels from 6 a.m. on February 12, 2004, to 10 p.m. on March 5, 2004, except from 10 p.m. to 6 a.m. on February 19 the bridge will not open, and each day from 10 p.m. to 6 a.m. on February 22 through February 27 the bridge will not open. This closure is necessary to facilitate mechanical repairs.

DATES: This deviation is effective from 6 a.m. on February 12, 2004 through 10 p.m. on March 5, 2004.

SUPPLEMENTARY INFORMATION: The S.R. 74 Bridge is owned and operated by the North Carolina Department of Transportation (NCDOT). NCDOT has requested a temporary deviation from the operating regulations to facilitate needed mechanical repairs to the bridge. The work involves the machining of damaged trunnion shafts and the installation of a new bushing on the east side lift span of the bridge. To facilitate the repairs, the work requires immobilizing the east side lift span in the closed position to vessels while the west side lift span will be functional beginning 6 a.m. on February 12, 2004, through 10 p.m. on March 12, 2004. However, the bridge will not open for vessels from 10 p.m. to 6 a.m. on February 19 and each day from 10 p.m. to 6 a.m. on February 22 through February 27, to remove and install the bushing. The Coast Guard has informed the known users of the waterway of the full and partial closure periods for the bridge caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117 Subpart A for the purpose of repair completion of the drawbridge. This temporary deviation allows the S.R. 74 Bridge, across the Atlantic Intracoastal Waterway mile 283.1, at Wrightsville Beach, NC, to operate half-leaf openings for vessels from 6 a.m. on February 12, 2004, through 10 p.m. on March 5, 2004, except from 10 p.m. to 6 a.m. on February 19 and each day from 10 p.m. to 6 a.m. on February 22 through February 27 the bridge will not open.

Dated: February 13, 2004.

Waverly W. Gregory, JR.,

Chief, Bridge Administration Section, Fifth Coast Guard District.

[FR Doc. 04–4208 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–009]

Drawbridge Operation Regulations: Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit Rail Operations railroad bridge, mile 0.2, across Cheesequake Creek, New Jersey. Under this temporary deviation the bridge may remain closed from 7:30 a.m. on February 28, 2004 through 7:30 a.m. on March 1, 2004, to facilitate necessary bridge maintenance.

DATES: This deviation is effective from February 28, 2004 through March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION: The New Jersey Transit Rail Operations railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.709(b).

New Jersey Transit Rail Operations, requested a temporary deviation from the drawbridge operation regulations to facilitate repairs to the electrical control unit at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the New Jersey Transit Rail Operations railroad bridge may remain in the closed position from 7:30 a.m. on February 28, 2004 through 7:30 a.m. on March 1, 2004.

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

Dated: February 13, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–4211 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–005]

RIN 1625–AA09

Drawbridge Operation Regulations: Providence River, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the drawbridge operation regulations for the US1 (Point Street) Bridge, mile 7.5, across the Providence River at Providence, Rhode Island. The US1 (Point Street) Bridge has been rebuilt as a fixed bridge and its drawbridge operation regulations are no longer necessary. Notice and public procedure have been omitted from this action because the bridge the regulations

formerly governed is fixed and no longer opens for navigation.

DATES: This final rule is effective February 26, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–005) and are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

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. Notice and comment are unnecessary because this action is the removal of drawbridge operation regulations for a bridge that is now a fixed bridge that can not open.

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

Background and Purpose

The US1 (Point Street) Bridge has been rebuilt as fixed bridge and no longer opens for the passage of vessel traffic. The drawbridge operation regulations for the US1 (Point Street) Bridge; therefore, are unnecessary, and will be removed by this action.

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).

This conclusion is based on the fact that the bridge no longer opens for vessel traffic; therefore, the drawbridge operation regulations are no longer necessary.

Small Entities

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

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

This conclusion is based on the bridge no longer opens for vessel traffic; therefore, the drawbridge operation regulations are no longer necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ Under 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), and for the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; DHS 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.

§ 117.907 [Removed]

■ 2. Remove § 117.907.

Dated: February 13, 2004.

J.L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–4279 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–012]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations and request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the AMTRAK Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this temporary 90-day deviation the two time periods in the morning and afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic, will be expanded. Additional bridge openings will be provided for commercial vessels after at least a one-hour advance notice is given. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comment from the public.

DATES: This deviation is effective from March 1, 2004 through May 29, 2004. Comments must reach the Coast Guard on or before 30 June 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, 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 the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

Request for Comments

We encourage you to participate in this schedule test by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–012), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

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

SUPPLEMENTARY INFORMATION: The AMTRAK Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(c).

The bridge owner, National Railroad Passenger Corporation (AMTRAK) requested a temporary deviation from the drawbridge operation regulations to test for a period of 90 days, an alternate drawbridge operation schedule. This temporary 90-day deviation will expand the two time periods in the morning and afternoon Monday through Friday when the bridge may remain closed to vessel traffic. Rail traffic during the morning and afternoon commuter periods have increased. Bridge openings during the two commuter time periods have caused delays to rail traffic prompting the bridge owner to request the expansion of the bridge closure periods week days, Monday through Friday.

The existing drawbridge operation regulations allow the bridge to remain closed to vessel traffic, Monday through Friday, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., daily.

Under this 90-day temporary deviation, effective from March 1, 2004 through May 29, 2004, the AMTRAK Portal Bridge need not open for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., daily.

Additional bridge openings will be provided for commercial vessels from 6 a.m. to 7:20 a.m., from 9:20 a.m. to 10 a.m., from 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR § 117.43.

Dated: February 13, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–4280 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–002]

RIN 1625–AA00

Security Zones; San Francisco Bay, California

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are moored in, anchored in or depart from the San Francisco Bay and Delta ports, California. These security zones are necessary security measures and are intended to protect the public and ports from potential

subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This rule is effective March 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket 03–002 and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 31, 2002, we published a final rule entitled "Security Zones, San Francisco Bay, CA" in the **Federal Register** (67 FR 79854) creating section 165.1183 of title 33 of the Code of Federal Regulations (CFR), setting forth security zones for cruise ships and tank vessels. On November 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Francisco Bay, California" in the **Federal Register** (68 FR 64038), proposing to amend section 165.1183 to include HIV's as protected vessels, along with cruise ships and tank vessels. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

On February 27, 2003, we published a rule in the **Federal Register** (68 FR 9003) creating temporary section 165.T11–077 of title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11–077, which expired at 11:59 p.m. P.s.t. on May 31, 2003, the Coast Guard established 100-yard security zones around all High Interest Vessels (HIV's) that entered, were moored in, anchored in or departed from the San Francisco Bay and Delta ports.

On May 30, 2003, a change in effective period temporary rule was published in the **Federal Register** (68 FR 32368) under the same previous temporary section 165.T11–077, which expired at 11:59 p.m. P.d.t. on September 30, 2003.

On September 26, 2003, another change in effective period temporary rule was published in the **Federal Register** (68 FR 55445) under the same previous temporary section 165.T11–077, which is set to expire at 11:59 p.m. P.s.t. on March 31, 2004. The Captain of the Port has determined that the need for continued security regulations exits. Accordingly, this final rule creates a permanent regulation for security zones in the same locations covered by the temporary final rule published on February 27, 2003 (68 FR 9003), which was later extended by two other rules published in the **Federal Register** on May 30, 2003 (68 FR 32368), and September 26, 2003 (68 FR 55445).

These security zones are activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W & 37°46.5′ N, 122°35.2′ W, respectively) and remains in effect while the vessel is underway, anchored or moored within in the San Francisco Bay and Delta ports. When activated, this security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W & 37°46.5′ N, 122°35.2′ W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this rule will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

Background and Purpose

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

The threat of maritime attacks is real as evidenced by the attack on the USS Cole and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared and ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions,

including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against an HIV would have on the public interest, the Coast Guard is establishing permanent security zones around and under HIV's entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against HIV's. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

Discussion of Comments and Changes

No public hearing was requested, and none was held. We received one letter on the proposed rule, which recommended that we establish a standardized means for vessels to transmit the existence of a security zone using their Automatic Identification System (AIS). Although AIS may be used in the future to include security zone information, the system and policies on how AIS will be used are still being developed. In addition, a Coast Guard or other law enforcement vessel will normally be present to escort HIVs. In addition to informing nearby vessels of the existence of the security zone, the escort boat provides a visual indication that a security zone is being enforced. Therefore, we did not change the final rule based on this comment and will implement the provisions of the proposed rule as written. The comment received regarding incorporation of security zone information in AIS data will be forwarded to the appropriate office at Coast Guard Headquarters for consideration in AIS technology development and implementation.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the zones, the effect of this regulation is not significant because: (i) The zones encompass only a small portion of the waterway; (ii) vessels are able to pass safely around the zones; (iii) vessels will be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The size of these zones is the minimum necessary to provide adequate protection for HIV's, their crews and passengers, other vessels operating in the vicinity of HIV's, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking an HIV in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones are only effective during HIV transits, which last approximately 30 minutes.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 because we are establishing a security zone. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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. Revise § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships, Tank Vessels and High Interest Vessels, San Francisco Bay and Delta ports, California.

(a) *Definitions.* As used in this section—

Cruise ship means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

High Interest Vessel or *HIV* means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

Tank vessel means any self-propelled tank ship that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

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

(1) *Zones for anchored vessels.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37° 46.5′ N, 122° 35.2′ W, respectively);

(2) *Zones for moored or mooring vessels.* The shore area and all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively); and

(3) *Zones for vessels underway.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

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

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

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement as necessary.

Dated: January 28, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–4209 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2004–1]

"Best Edition" of Published Motion Pictures for the Collections of the Library of Congress

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule with request for comments.

SUMMARY: Owners of motion pictures that have been published must submit copies of their movies to the Copyright Office for the Library of Congress to use and include in its collections. This mandatory deposit requirement may be satisfied at the same time that an application for copyright registration is submitted. In order to obtain copies of superior quality when works are published in more than one format, the Library of Congress established "best edition" requirements. The purpose of this rule is to amend the best edition requirements for motion pictures to take into account recent technological developments and to make editorial changes that clarify the requirements.

DATES: Effective date: This rule shall take effect April 26, 2004.

Comment Date: Comments are due by March 29, 2004.

ADDRESSES: An original and ten copies of any comment shall be sent to the Copyright Office. If comments are mailed, the address is: Copyright Office GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. If comments are hand delivered by a commercial, non-government courier or messenger, comments must be delivered to: the Congressional Courier Acceptance Site, located at Second and D Streets, NE., between 8:30 a.m. and 4 p.m., e.s.t. If hand delivered by a private party, they must be delivered to the Public Information Office, James Madison Memorial Building, Room 401, First and Independence Street, Washington, DC between 8:30 a.m. and 5 p.m., e.s.t.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Associate General Counsel, or Renee Coe, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 407 and 408 of title 17, United States Code, require that owners of any motion picture that has been published must deposit a copy of the work with the Copyright Office for the use of the Library of Congress. The copy submitted must be the "best edition" of the work, which is "the edition, published in the United States, at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." 17 U.S.C. 101 (definition of best edition). Based on that statutory requirement, the regulations require that "when two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition." 37 CFR 202, App. B. The criteria for what constitutes the best edition, for all kinds of copyrighted works, are contained in Appendix B of 37 CFR 202, which is entitled '"Best Edition' of Published Copyrighted Works for the Collections of the Library of Congress." Subpart III of Appendix B establishes the requirements for motion pictures, ranking movie formats for commercial and home viewing in descending order of preference relative to their quality, beginning with the format that is most suitable for the Library's purposes. This regulation amends subpart III to make changes that take into account recent technological developments and to make editorial changes that clarify the requirements.

II. Changes to Best Edition Rule

A. Film Formats

The only change to the requirements for film formats is to add 70 millimeter positive print as the most desirable film format (apart from preprint material, by special arrangement). The addition of this film format to the regulation clarifies the Library's desire to obtain published motion pictures in a superior format. This format is only required where the original production negative size is greater than 35 millimeters.

B. Video Formats

One-Inch Open Reel Tape. One-inch open reel tape has been deleted from subpart III of the best edition list because it is a defunct format.

BetacamSP, Digibeta and Betacam. Betacam SP will continue to be on the list and digibeta, also known as digital beta, has been added. These are videocassettes in analog and digital formats, respectively, that are now widely used in the television industry. Both are better quality than the format that is commonly known as "betacam," which has been deleted from the list.

D–2. D–2 is an obsolete version of the D Series. The current version is D–9. However, the format for the D Series has been entirely eliminated from the list because each version rapidly becomes obsolete.

DVD and Videodisc. DVDs, which are 4¾ inch disks in digital format for home viewing of films, are replacing videodiscs on the list, which are 12 inch disks in analog format.

Three-Quarter Inch Cassette. Three-quarter inch cassette, also commonly known as "U-matic," has been removed from the list because it is a defunct format.

One-Half Inch VHS Cassette and VHS Cassette. Changing "one-half inch VHS cassette" to "VHS cassette" is an editorial change. "VHS cassette" is now the commonly used term for this home viewing format.

III. Written Comments

The Copyright Office is publishing this amendment as a final rule because owners of published motion pictures have already begun complying with these changes to the best edition requirements. The Office believes these changes are noncontroversial and will elicit no significant adverse comment. However, the Office is providing the public an opportunity to submit written comments by March 29, 2004. The rule will take effect April 26, 2004, unless the Copyright Office has received adverse substantive comments and publishes a notice withdrawing the rule before that date.

IV. Regulatory Flexibility Act Statement

Although the Copyright Office, as a department of the Library of Congress and part of the Legislative Branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendments would not have a significant economic impact on a substantial number of small business entities that would require a provision of special relief for them. The proposed amendments are designed to minimize any significant economic impact on small business entities.

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Proposed Regulations

■ In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. In part 202, Appendix. B, "III. Motion Pictures" is revised to read as follows:

Appendix B to Part 202—"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress

* * * * *

III. Motion Pictures

Film medium is considered a better quality than any other medium. The formats under "film" and "video formats" are listed in descending order of preference:

A. Film

1. Preprint material, by special arrangement
2. 70 mm positive print, if original production negative is greater than 35 mm
3. 35 mm positive prints
4. 16 mm positive prints

B. Video Formats

1. Betacam SP
2. Digital Beta (Digibeta)
3. DVD
4. VHS Cassette

* * * * *

Dated: February 11, 2004.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–3958 Filed 2–25–04; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 262

[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Correction to final rule.

SUMMARY: This document corrects an error contained in the definition section of the final rule published on February 6, 2004, that set rates and terms for the public performance of a sound recording made pursuant to a statutory license by means of certain eligible nonsubscription transmissions and digital transmissions made by a new subscription service.

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On May 8, 2003, the parties to this rate adjustment proceeding presented the Librarian of Congress with a settlement proposing the rates and terms for the use of sound recordings in eligible nonsubscription transmissions and new subscription services pursuant to the section 112 and section 114 statutory licenses. Section 251.63(b) of title 37 of the Code of Federal Regulations allows the Librarian to adopt the parties' proposed rates and terms without convening a Copyright Arbitration Royalty Panel ("CARP"), provided the proposed rates and terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files an objection to the proposed rates and/or terms. Accordingly, on May 20, 2003, the Copyright Office published the proposed regulations for notice and comment. 69 FR 27506 (May 20, 2003). However, the published document contained an error in § 262.2(a), which defines the term "Aggregate Tuning Hours." The error appeared in the example illustrating the calculation of Aggregate Tuning Hours and apparently occurred as the **Federal Register** conformed the document to its style requirements. At that time, the **Federal Register** inadvertently changed the phrase "If three minutes" to "If 30 minutes." This error went undetected; as a result, it also appeared in the final rule document published on February 6, 2004. This document corrects that error.

List of Subjects in 37 CFR Part 262

Copyright, Digital audio transmissions, Performance right, Sound recordings

Correction

■ In FR Doc. 04–2535 appearing on page 5693 in the **Federal Register** of Friday, February 6, 2004, make the following correction:

§ 262.2 [Corrected]

■ On page 5696, in the first column, in paragraph (a), in the tenth line, the phrase "If 30 minutes" is corrected to read "If 3 minutes".

Dated: February 17, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–3957 Filed 2–25–04; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 210–4302; FRL–7616–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions To Update the 1-Hour Ozone Maintenance Plan for the Reading Area (Berks County)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions amend Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Reading area (Berks County). The maintenance plan is being amended to revise the attainment year inventories and motor vehicle emission budgets using MOBILE6. The contingency measures portion of the plan is also being amended. The intended effect of this action is to approve SIP revisions that will better enable the Commonwealth of Pennsylvania to continue to maintain attainment of the 1-hour NAAQS for ozone in the Reading area. This action is being taken under the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on March 29, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 19, 2003 (68 FR 65234), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania pertaining to revisions to the ten-year plan to maintain the 1-hour ozone national NAAQS in the Reading area Berks County. In that NPR, EPA proposed approval of revisions to the attainment year inventories and the 2004 and 2007 motor vehicle emission budgets (MVEBs) using MOBILE6. The MOBILE6 model is an updated version of the MOBILE model used for calculating mobile emissions of ozone precursors. In that same NPR published on November 19, 2003, EPA also proposed approval of revisions to the contingency measures portion of the maintenance plan. EPA proposed approval of these SIP revisions under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. The State's proposed SIP revisions were submitted to EPA on October 14, 2003 by the Pennsylvania Department of the Environmental Protection (PADEP). On November 19, 2003, EPA proposed approval of Pennsylvania's October 14, 2003 submittal. No comments were submitted during the public comment period on EPA's November 19, 2004 proposal. The PADEP formally submitted the final SIP revision on December 9, 2003. That final submittal had no substantive changes from the proposed version submitted to EPA on October 14, 2003. A detailed description of both Pennsylvania's submittal and EPA's rationale for its proposed approval were provided in the November 19, 2003 NPR and, therefore, are only briefly summarized here.

II. Summary of the SIP Revisions to the Reading Area Maintenance Plan

A. Revisions to the Motor Vehicle Emission Budgets (MVEBs)

For the Reading area maintenance plan, the MVEBs are the projected on-road mobile source components of the 2004 and 2007 maintenance inventories. These budgets were developed using the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled, speeds, fleet mix, and SIP control measures. Because PADEP's December 9, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support maintenance of the 1-hour ozone NAAQS, EPA is approving these budgets. The revised mobile inventories and emissions budgets being approved for the Reading area are shown below in Tables 1 and 2 respectively.

TABLE 1.—MOBILE6-BASED MOTOR VEHICLE EMISSIONS INVENTORIES FOR THE READING AREA

Maintenance area	1992 Attainment year	
	VOC (tpd)	NO_X (tpd)
Reading (Berks County)	27.25	35.57

TABLE 2.—MOBILE6-BASED MVEBS IN THE MAINTENANCE PLAN FOR THE READING AREA

Maintenance Area	2004		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Reading Area (Berks County)	17.02	28.99	13.81	23.06

B. Revisions to the Contingency Measures

In the original maintenance plan for the Reading area, the Commonwealth's motor vehicle inspection and maintenance (I/M) program was identified as a contingency measure. The December 9, 2003 SIP revision moves the I&M program from the contingency measures portion of the plan and makes it part of the maintenance strategy. Improved rule effectiveness will remain as a contingency measure in the maintenance plan.

III. Final Action

EPA is approving Pennsylvania's December 9, 2003 SIP revisions. These revisions amend the Reading area's maintenance plan for the 1-hour NAAQS to update the attainment year motor vehicle emissions inventory and the 2004 and 2007 MVEBs using MOBILE6. The revisions also amend the contingency measures portion of the maintenance plan.

In accordance with the parallel processing procedures, EPA has evaluated Pennsylvania's final SIP revisions submitted on December 9, 2003 and finds that no substantial changes were made from the proposed SIP revisions submitted on October 14, 2003. The revised plan for the Reading area continues to demonstrate maintenance of the 1-hour NAAQS for ozone

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve SIP revisions to the 1-hour ozone maintenance plan for the Reading area which amend its contingency measures and revise the attainment year motor vehicle emissions inventory and 2004 and 2007 MVEBs using MOBILE6 may not be challenged later in proceedings to enforce their requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 22, 2004.

Judith Katz,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(222) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(222) Revisions to Pennsylvania's 1-hour ozone maintenance plan for the Reading area to amend the contingency measures and to revise the attainment year mobile emissions inventories and the 2004 and 2007 motor vehicle emission budgets to reflect the use of MOBILE6. These revisions were submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection to EPA on December 9, 2003.

(i) Incorporation by reference.

(A) Letter of December 9, 2003 from the Secretary of the Pennsylvania Department of Environmental Protection transmitting revisions to Pennsylvania's 1-hour ozone maintenance plan for the Reading area.

(B) Document entitled "Revision to the State Implementation Plan for the Reading Area (Berks County)." This document, dated November 2003, establishes the following:

(*1*) Revisions to the Reading area's 1-hour ozone maintenance plan, establishing revised motor vehicle emissions budgets of 17.02 tons/day of volatile organic compounds (VOC) and 28.99 tons/day of oxides of nitrogen (NO_X) for 2004; and motor vehicle emissions budgets of 13.81 tons/day of VOC and 23.06 tons/day of NO_X for 2007.

(*2*) Revision to the Reading area's 1-hour ozone maintenance plan which moves the Inspection and Maintenance program from the contingency measures portion of the plan and to make it part of the maintenance strategy.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(222)(i) of this section.

[FR Doc. 04–1969 Filed 2–25–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7622–9]

Revision to the Texas Underground Injection Control Program Approved Under Section 1422 of the Safe Drinking Water Act and Administered by the Railroad Commission of Texas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is amending the Code of Federal Regulations (CFR) and incorporating by reference (IBR), the revised Underground Injection Control (UIC) Program for Brine Mining Wells implemented by the Railroad Commission (RRC) of Texas. EPA

initially approved that portion of the Texas UIC program which is the subject of this rule on April 23, 1982. Since then, the State has had primary authority to implement the UIC program for brine mining wells. Subsequently, the State has made changes to the EPA-approved brine mining wells program and submitted them to EPA for review. Those changes are the subject of this rule. EPA, after conducting a thorough review, is hereby approving and codifying these program revisions. As required in the Federal UIC regulations, substantial State UIC program revisions must be approved and codified in the CFR by a rule signed by the EPA Administrator. The intended effect of this action is to approve, update and codify the revisions to the authorized Texas UIC program for brine mining wells and to incorporate by reference the relevant portions of the revisions in the Code of Federal Regulations.

DATES: This rule is effective on March 29, 2004. The Director of the Federal Register approves the incorporation by reference contained in this rule as of March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mario Salazar, (*salazar.mario@epa.gov*), Mail code 4606M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, voice (202) 564–3894, fax 202 564–3756. For technical and background information contact Ray Leissner, (*leissner.ray@epa.gov*) Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX, 75202–2733, voice (214) 665–7183, fax (214) 665–2191.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

This action does not impose any regulation on the public, and in fact there are no entities affected. This action merely approves, codifies, and incorporates by reference into the Code of Federal Regulations the revisions to the Texas UIC program previously adopted by the State. The rules that are the subject of this codification are already in effect in Texas under Texas law. The IBR allows EPA to enforce the State authorized UIC program, if necessary, and to intervene effectively in case of an imminent and substantial endangerment to public health and/or underground sources of drinking water (USDWs) in the State.

II. Background

Section 1421 of Safe Drinking Water Act (SDWA) requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of SDWA allows States to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application that: (1) Contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program which meets the requirements of regulations in effect under section 1421 of SDWA, and (2) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

To be approved under section 1422, a State must, among other things, show that it will implement an underground injection control program that meets the requirements of the Federal regulations in effect under SDWA, section 1421. Specifically, all State programs approved under section 1422 must meet the minimum requirements in title 40 parts 144 to 146 and 148. States need not implement provisions identical to the provisions listed in these parts, but they must implement provisions that are at least as stringent. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator to, by rule, approve, disapprove, or approve in part, the State UIC program.

EPA's approval of primacy for the State of Texas for underground injection into Class I, III, IV, and V wells was published on January 6, 1982 (47 FR 618), and became effective February 6, 1982. Elements of the State's primacy application, submitted through the Texas Department of Water Resources (TDWR), a predecessor to the Texas Commission on Environmental Quality [1] (TCEQ), were approved and published in title 40 of the Code of Federal Regulations, at 40 CFR 147.2200. Since that time, authority has been passed through to succeeding agencies. The TDWR became the Texas Water Commission (TWC), which was reorganized in 1993 into the Texas Natural Resource Conservation Commission (TNRCC) and recently renamed the Texas Commission on Environmental Quality (TCEQ). TCEQ is the agency currently charged with administering the UIC program for Class I, III, IV, and most Class V wells in Texas.

In addition to TDWR receiving approval to administer the UIC program for Class I, III, IV and V injection wells, RRC received approval to administer the UIC program for energy related injection activities in the State, effective May 23, 1982. These wells include Class II injection wells related to oil and gas exploration and production, and Class V geothermal return and in situ coal combustion wells. In 1985, the 69th Texas Legislature enacted legislation that transferred jurisdiction over Class III brine mining wells from the Texas Water Commission, now the Texas Commission on Environmental Quality, to the RRC.

Section 1422 of SDWA and regulations at 40 CFR 145.32 allow for revision of approved State UIC programs when State statutory or regulatory authority is modified or supplemented. In accordance with those requirements, and in conjunction with a substantial revision submitted by the TNRCC (now TCEQ) and approved earlier, RRC submitted revisions to EPA for approval and codification of that portion of RRC's UIC program governing Class III brine mining wells. The RRC program related to Class V geothermal return and *in situ* combustion of coal has not been revised and remains in effect. Other Class III injection wells remain regulated by the TCEQ.

EPA proposed the program revisions to RRC's Class III brine mining program in the **Federal Register** on November 8, 2001 (66 FR 56503–56507) and in five major newspapers within the State. That proposal indicated EPA's intention to approve the revisions to the RRC program for Class III brine mining wells, asked for comments, and offered the opportunity to request a public meeting. That notice included a description of key issues raised and actions taken to achieve issue resolution. The key issues identified and discussed in the proposal related to the following components in the RRC UIC program:

- Protection Standard;
- Fluid Migration;
- Plugging and Abandonment;
- Permit Application Requirements;
- Monitoring, Compliance Tracking and Enforcement Activities;
- Public Participation;
- References to State Law.

As indicated above, the proposal gives specific steps that were taken to achieve issue resolution. No comments or requests for hearing were received in response to the proposal of November 8, 2001.

[1] On September 1, 2002, the Texas Natural Resources Conservation Commission changed its name to the Texas Commission on Environmental Quality. The proposal published by EPA on November 8, 2001 (66 FR 56503–56507) referenced the prior name, the Texas Natural Resources Conservation Commission (TNRCC).

The proposal published in the **Federal Register** on November 8, 2001 (66 FR 56503–56507) included changes to 40 CFR 147.2200 to implement RRC programmatic changes. The changes to Part 147 promulgated in today's rule differ from the proposed changes only in formatting and in the addition of a specific list of the types of wells, other than Class II, that are included in the RRC program.

Today's action approves, codifies, and incorporates by reference those revisions submitted by the RRC to the Class III portion of the State's UIC program for brine mining wells originally approved under section 1422 of SDWA in 1982.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not impose any information collection, reporting, or record-keeping requirements. It merely approves, codifies, and incorporates by reference State revisons to the EPA approved UIC program.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, we defined small entities as (1) a small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely approves, codifies, and incorporates by reference into 40 CFR part 147 the revisions to the Texas program regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. Codification of these revisions does not result in additional regulatory burden to or directly impact small businesses in Texas.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector because the rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule only approves the State's UIC regulations as revised and in effect in the State of Texas. Thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA. For the same reason, EPA has determined that this rule contains no regulatory

requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely approves and codifies regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This codification revises the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Thus, Executive Order 13132 does not apply to this rule. Although Executive Order 13132 does not apply to this rule, extensive consultation between EPA and the State of Texas went into revising the UIC regulations. The proposal published in the **Federal Register** on November 8, 2001 (66 FR 56503–56507) provides a detailed description of the consultations that took place in preparation of the Texas UIC regulations which are the subject of this codification. In addition, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The UIC program for Indian lands is separate from the State of Texas UIC program. The UIC program for Indian lands in Texas is administered by EPA and can be found at 40 CFR 147.2205 of the Code of Federal Regulations. Thus, Executive Order 13175 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from Tribal officials in its notice published in the **Federal Register** on November 8, 2001 (66 FR 56496–56503), and in five major newspapers within the State.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide to Congress, through the Office of Management and Budget (OMB), explanations when EPA decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations or Low-Income Populations

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. This rule does not affect minority or low income populations.

K. Congressional Review Act

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

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on March 29, 2004.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 9, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart SS—Texas

■ 2. Section 147.2200 is amended by adding three sentences to the end of the introductory text and by adding paragraphs (a)(2), (b)(2), (c)(2), (d)(2), and (e)(2) to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

* * * The UIC program for Class III brine mining wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas. A program revision application for Class III brine mining wells was submitted by Texas and approved by EPA. Notice of that approval was published in the **Federal Register** on February 26, 2004; the effective date of this program is March 29, 2004.

(a) * * *

(2) Texas Statutory and Regulatory Requirements Applicable to the Underground Injection Control Program for Class III Brine Mining Wells, March 2002.

(b) * * *

(2) *Class III brine mining wells.* (i) Vernon's Texas Codes Annotated, Natural Resources Code, Chapters 91, 2001, and 331;

(ii) Vernon's Texas Codes Annotated, Government Code Title 10, Chapters 2001, 552, and 311.

(iii) General Rules of Practice and Procedure before the Railroad Commission of Texas.

(c) * * *

(2) *Class III brine mining wells.* The Memorandum of Agreement between EPA Region VI and the Railroad Commission of Texas signed by the EPA Regional Administrator on October 23, 2001.

(d) * * *

(2) *Class III brine mining wells.* State of Texas "Attorney General's Statement" for Class III Brine Mining Injection Wells, signed by the Attorney General of Texas, February 2, 1992 and the "Supplement to Attorney General's Statement of February 19, 1992," signed by the Attorney General of Texas, June 2, 1998.

(e) * * *

(2) *Class III brine mining wells.* The Program Description and any other materials submitted as part of the revision application or as supplements thereto.

[FR Doc. 04–3223 Filed 2–25–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7627–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition to exclude (or "delist") wastewater treatment plant sludge from conversion coating on aluminum generated by the DaimlerChrysler Corporation Jefferson North Assembly Plant (DCC–JNAP) in Detroit, Michigan from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusion was proposed on March 7, 2002 as part of an expedited process to evaluate this waste under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

EFFECTIVE DATE: This rule is effective on February 26, 2004.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5–MIECOS–01, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886–1482 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Judy Kleiman at the address above or at (312) 886–1482.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR 261.11) and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability,

reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* 40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes and to ensure that future generated wastes meet the conditions set.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

II. The Expedited Process for Delisting

A. Why Was the Expedited Process Developed for This Waste?

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. A number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

B. What Is the Expedited Process To Delist F019?

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility which may be covered by an expedited delisting is 3,000 cubic yards, but delisting levels were also proposed for smaller quantities of 1,000 and 2,000 cubic yards.

III. EPA's Evaluation of This Petition

A. What Information Was Submitted in Support of This Petition?

DCC–JNAP submitted certification that its process was the same as the process described in the MOU with MDEQ. *See* 67 FR 10341, March 7, 2002. The facility also submitted an assertion that its waste does not meet the criteria for which F019 waste was listed and there are no other factors which might cause the waste to be hazardous.

In the proposed rulemaking, EPA set forth different demonstration and verification sampling depending upon whether or not the facility was already generating F019 (67 FR 10341, March 7, 2002). At the time of the proposed delisting, DCC–JNAP was not yet generating F019 because it was not using aluminum in car production. However, by the time it conducted demonstration sampling, DCC–JNAP had begun generating F019, although production of cars with aluminum was less than 50 units per day. Therefore, the demonstration sampling submitted by DCC–JNAP and the verification sampling required in today's rule parallels demonstration and verification sampling for facilities already generating F019. At the time of the demonstration sampling, DCC–JNAP was already incorporating aluminum parts and thus generating F019, but was producing less than 50 cars per day with aluminum. Although not required in today's rule, EPA has requested DCC–JNAP to notify the Agency when production of aluminum containing cars reaches 500 units per day.

To support its exclusion demonstration, DCC–JNAP collected six samples representing waste generated over six weeks. Each sample was analyzed for: (1) Total analyses of the 70 constituents of concern; (2) Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, analyses of the 70 constituents of concern; (3) oil and grease; (4) leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A, in lieu of Method 1311 if a sample contained more than 1% oil and grease; and (5) total constituent analyses for sulfide and cyanide; In addition, the pH of each sample was measured and a determination was made that the waste was not ignitable, corrosive or reactive (*see* 40 CFR 261.21–261.23). All sampling and analysis were done in accordance with the sampling and analysis plan which is an appendix to the MOU and is available in the docket for this rule. The data submitted included the appropriate QA/QC information as required in the sampling and analysis plan and was validated by a third party.

A few minor changes in the sampling approach were made prior to the sampling. Instead of sampling from six different roll-off boxes, which would have required multiple sampling events or long-term storage of full roll-off boxes, DCC–JNAP collected representative amounts of sludge each week from February 17, 2003 through March 30, 2003. The sludge for each week was placed in a separate drum. On March 31, 2003, composite and grab samples were collected from each drum.

The maximum values of constituents detected in any sample of the waste water treatment plant sludge and in a TCLP extract of that sludge are summarized in the following table.

Constituent	Maximum concentration observed		Maximum allowable delisting level (2,000 cubic yards)		Maximum allowable groundwater concentration (µg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
acetone	<7.5	2.6	NA	228	3,750
ethylbenzene	<0.5	0.012	NA	42.6	700
formaldehyde	6.2	0.31	689	84.2	1,380
methyl ethyl ketone	<2.5	0.11	NA	200	22,600
methylene chloride	<2.5	0.051	NA	0.288	5
n-butyl alcohol	<2.5	0.31	NA	228	3,750
toluene	3.8	0.3	NA	60.8	1,000
xylene	1.9	0.057	NA	608	10,000
Semivolatile Organic Compounds					
bis(2-ethylhexyl) phthalate	8.3	<0.005	NA	0.0896	1.47
o-cresol	<1.5	0.003 J	NA	114	1,875
p-cresol	<1.5	0.17	NA	11.4	188
di-n-octyl phthalate	2.6	<0.002	NA	0.112	1.3
naphthalene	0.10 J	0.0005 J	NA	15	246
Metals					
antimony	0.67	<0.05	NA	0.659	6.0
arsenic	0.25	<0.02	8,140	0.3	4.87
barium	527	0.73	NA	100	2,000
cadmium	2.7	<0.022	NA	0.48	5.0
chromium	50	<0.11	NA	4.95	100
cobalt	3.0	<0.028	NA	72.1	2,250
lead	30 J	<0.14	NA	5	15
nickel	3,790	38	NA	90.5	750
thallium	0.87	<0.02	NA	0.282	2.0
tin	4,420	58.4	NA	721	22,500
zinc	14,700	3.84	NA	898	11,300
Miscellaneous					
corrosivity (pH)	6.81 to 7.30		2 < x < 12.5		NS
Oil & grease	43,700		NS		NS
sulfide	404	NA	See 40 CFR 261.23		NS

J the numerical value is an estimated quantity
< not detected at the specified concentration
NS not specified
NA not analyzed
B constituent detected in method blank at a concentration greater than 10% of the reported value
These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in one sample.

B. How Did EPA Evaluate the Information Submitted?

EPA compared the analytical results submitted by DCC–JNAP to the maximum allowable levels calculated by the DRAS and set forth in the proposed rule (67 FR 10341, March 7, 2002). The maximum allowable levels for constituents detected in the waste or the waste leachate are summarized in the table above, along with the observed levels. All constituents compared favorably to the allowable levels.

The table also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by the Delisting Risk Assessment Software (DRAS). These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of 10^{-6}. For arsenic, the target cancer risk was set at 10^{-4} in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 10 µg/L.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is 1×10^{-5} and the target hazard index is one. The waste water treatment plant sludge at DCC–JNAP met both of these criteria.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal, suggesting expanding the project and/or revising the listing.

B. Comments Received and Responses From EPA

(1) *Comment:* EPA should revise the F019 listing to specify that wastewater treatment sludge from zinc phosphating operations is not within the scope of the listing. Data gathered as a result of the

Expedited Delisting Project together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

EPA Response: The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past data, as a basis for a possible revision to the F019 listing.

(2) *Comment:* EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

EPA Response: An interpretive rule presents administrative and technical difficulties. A revision to the listing will require a rulemaking process. *See* response to comment (1) above.

(3) *Comment:* Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

EPA Response: The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (State or region).

(4) *Comment:* Alternatives to landfilling like recycling should be allowed within the petition process.

EPA Response: The Agency does not delist wastes which are recycled because the model used to estimate risk is based only on disposal of waste in a Subtitle D landfill. The risk which might result from any other scenario is not evaluated by the delisting program. However, the Agency encourages safe recycling, and variances and exclusions from the definition of solid and hazardous wastes are available for wastes which are recycled.

(5) *Comment:* Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

EPA Response: Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels which are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance-based methods results in better data.

(6) *Comment:* Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

EPA Response: Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) *Comment:* Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change be promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

EPA Response: Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) *Comment:* The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

EPA Response: Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) *Comment:* The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

EPA Response: The error was caused by a missing space or tab in the table. Although vinyl chloride was not detected in the waste at DCC–JNAP, the maximum allowable concentrations proposed for 1,000 cubic yards of waste should have been a total of 178 milligrams per kilogram (mg/kg) and 0.00384 milligrams per liter (mg/L) in the TCLP. For 2,000 cubic yards of waste, 115 mg/kg total and 0.00234 mg/L TCLP were proposed. For 3,000 cubic yards of waste, 89.4 mg/kg total and 0.00175 mg/L TCLP were proposed.

V. Final Rule Granting These Petitions

A. What Decision Is EPA Finalizing?

Today the EPA is finalizing exclusions to conditionally delist 2,000 cubic yards annually of wastewater treatment plant sludge from conversion coating on aluminum generated at the DCC–JNAP.

On March 7, 2002, EPA proposed to exclude or delist these wastewater treatment sludges from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and we believe that these wastes should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

DCC–JNAP must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. DCC–JNAP must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. In addition, the sum of the hazard quotients for nickel and either thallium or cadmium may not exceed one.[1] All facilities participating in the expedited delisting project had significant amounts of nickel in the leachate, and nickel combines with thallium and with cadmium targeting the liver and kidneys, respectively.

DCC–JNAP must obtain and analyze a representative sample of the waste according to the current waste analysis plan modified to include the improved methodologies discussed in section III. A.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at the majority of facilities participating in the expedited process to delist F019 and the concentrations relative to the allowable levels.

This exclusion applies only to a maximum annual volume of 2,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective [insert date of publication]. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

[1] The proportion of the hazard quotient which may be attributed to a constituent can be represented by the ratio of the TCLP concentration of that constituent to its allowable delisting level. The sum of the hazard quotients for two constituents may thus be represented by the sum of these ratios.

D. How Does This Action Affect the States?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this 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 Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 12, 2004.

William H. Harris,

Acting Director, Waste, Pesticides and Toxics Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of Part 261 the following wastestreams are added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
DaimlerChrysler Corporation.	Jefferson North Assembly Plant, Detroit, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Jefferson North Assembly Plant (DCC–JNAP) at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		1. *Delisting Levels:* (A) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; Acetone—228; p-Cresol—11.4; Formaldehyde—84.2; and Methylene chloride—0.288. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and either thallium or cadmium shall not exceed 1.0. 2. *Quarterly Verification Testing:* To verify that the waste does not exceed the specified delisting levels, DCC–JNAP must collect and analyze one representative sample of the waste on a quarterly basis. 3. *Changes in Operating Conditions:* DCC–JNAP must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. DCC–JNAP must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. *Data Submittals:* DCC–JNAP must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, DCC–JNAP possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then DCC–JNAP must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify DCC–JNAP in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing DCC–JNAP with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. DCC–JNAP shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days the facility presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) *Maximum Allowable Groundwater Concentrations* (μg/L): Antimony—6; Arsenic—4.87; Cadmium—5; Chromium—100; Lead—15; Nickel—750; Selenium—50; Thallium—2; Tin—22,500; Zinc—11,300; acetone—3,750; p-Cresol—188; Formaldehyde—1,380; and Methylene chloride—5.

[FR Doc. 04–4252 Filed 2–25–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–373, MB Docket No. 03–221, RM–10796]

Television Broadcast Service; Tupelo, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KB Prime Media and United Television, Inc., substitutes channel 49+ for channel 35+ at Tupelo, Mississippi. *See* 68 FR 62046, October 31, 2002. TV channel 49+ can be allotted to Tupelo, Mississippi, in compliance with Sections 73.610 and 73.698 at coordinates 33–55–37 N. and 88–33–36 W. With this action, this proceeding is terminated.

DATES: Effective April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–221, adopted February 12, 2004, and released February 19, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing TV channel 35+ and adding TV channel 49+ at Tupelo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–4261 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–374, MB Docket No. 03–234, RM–10699]

Digital Television Broadcast Service; Fargo, ND.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of North Dakota Television License, Sub., substitutes DTV channel 44 for DTV channel 58 at Fargo, North Dakota. *See* 68 FR 66394, November 26, 2003. DTV channel 44 can be allotted to Fargo, North Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–20–32 N. and 97–17–20 W., with a power of 414, HAAT of 543 meters and with a DTV service population of 313,000. Since the community of Fargo is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–234, adopted February 12, 2004, and released February 19, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under North Dakota, is amended by removing DTV channel 58 and adding DTV channel 44 at Fargo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–4262 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2000–8156, Notice No. 3]

RIN 2130–AB28

Roadway Maintenance Machine Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of FRA's July 28, 2003 final rule which prescribed safety standards for railroad on-track roadway maintenance machines and hi-rail vehicles. This document amends and clarifies the final rule.

DATES: *Effective Date:* The amendments to the final rule are effective April 26, 2004.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments and petitions for reconsideration received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the NASSIF Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Staff Director, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236); Allen Ludwig, Track Safety Specialist, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6474); or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6026).

SUPPLEMENTARY INFORMATION:

Introduction

On July 28, 2003, FRA published a final rule that prescribed safety standards for railroad on-track roadway maintenance machines and hi-rail vehicles. *See* 68 FR 44388. The final rule originated from a 1990 petition for rulemaking by the Brotherhood of Maintenance of Way Employees (BMWE) and was the product of a rulemaking effort conducted under the

auspices of FRA's Railroad Safety Advisory Committee (RSAC).

RSAC Overview

As background, RSAC provides a forum for developing consensus recommendations on rulemaking and other safety program issues, and includes representatives from all of FRA's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force or other subgroup reports to the working group. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff is actively involved at the working group and subgroup levels in discussing issues and options and drafting proposed rule language, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

Proceeding to Date

In 1996, FRA requested that RSAC address rulemaking revisions to the Track Safety Standards, found at 49 CFR part 213. RSAC agreed to the task and formed the Track Working Group to help develop the revisions. The Track Working Group decided by consensus that a new set of regulations addressing the safety of on-track roadway maintenance machines should be developed in a separate rulemaking. After publication of revisions to the Track Safety Standards in 1998, the Track Working Group appointed a six-member Task Group to help develop regulations addressing the safety of on-track roadway maintenance machines and hi-rail vehicles. The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), BMWE, Norfolk Southern Railway Co., and an equipment supplier. The Task Group drafted proposed rule text which the Track Working Group recommended to the full RSAC for approval. RSAC approved the recommendations. FRA agreed that the recommendations provided a good basis for a proposed rule and subsequently published a Notice of Proposed Rulemaking (NPRM) on Roadway Maintenance Machine Safety on January 10, 2001. *See* 66 FR 1930.

FRA received comments from five organizations in response to the proposed rule. In February 2002, the Task Group met with most of the commenters, as well as other representatives from the industry, to clarify and further discuss the comments and suggestions provided by the commenters. The Task Group, by unanimous vote, made recommendations to the Track Working Group as to how the final rule should respond to each of the comments. The Track Working Group presented these recommendations to the full RSAC, which also agreed with them by unanimous vote. FRA considered the comments received on the NPRM and the recommendations of RSAC in preparing the final rule. FRA largely adopted the recommendations of RSAC in preparing the final rule, as explained in the preamble to the rule. *See* 68 FR 44388.

Following publication of the final rule, the AAR and the Union Pacific Railroad Company (UP) filed petitions seeking FRA's reconsideration and clarification of certain provisions of the rule. The specific issues raised by these petitioners, and FRA's response to their petitions, are discussed in detail in the "Section-by-Section Analysis" portion of the preamble, below. The "Section-by-Section Analysis" portion of the preamble addresses each provision of the final rule which FRA has amended or clarified. This will enable the regulated community to more readily compare this document with the preamble discussions contained in the final rule and will thereby aid in understanding the requirements of the rule.

Section-by-Section Analysis

Section 214.507 Required Safety Equipment for New On-Track Roadway Maintenance Machines

This section contains requirements for safety equipment for all new on-track roadway maintenance machines. In the final rule, paragraph (a)(4) provided that all new on-track roadway maintenance machines have windshields made of safety glass or other material with similar properties, such as Lexan, as well as power windshield wipers. 68 FR 44409. In cases where traditional windshield wipers are incompatible with the windshield material, the final rule provided that a suitable alternative be available that offers the operator of the machine an equivalent level of vision. *Id.*

UP filed a petition seeking clarification whether the requirements of paragraph (a)(4) excluded those machines that would either require a windshield to be applied to a void space or otherwise provide no protection or other value to the operator. UP agreed that machines with enclosed cabs should be equipped with windshields to protect the operator, but raised the concern that there are many types of machines that either do not have the framework to accommodate a windshield or cannot practically be equipped with windshields. UP stated that such machines vary in weight from 10,000 to 30,000 pounds, are used in production gang consists, and do not travel long distances or at high speeds.

UP submitted to the docket several pictures of an example of such a machine, a rail anchor applicator. According to UP, the machine weighs approximately 10,000 pounds and, by design, does not have an enclosed cab. UP explained that, while it is possible to install a windshield on one or both sides of the operator by building a framework for the windshield, such a windshield would exist only to comply with a regulation and would not provide any protection or other value to the operator. UP stated that such a windshield would be an obstacle to the safe operation of the machine because it would be constantly in the way when loading anchors and operating the machine. Further, UP stated that windows on such a machine could not practically be equipped with wipers, would be a constant cleaning problem, and could impair the operator's vision. In addition to rail anchor applicators, UP cited the following machines as not

appropriate for being equipped with windshields:

- Anchor spreaders;
- Anchor squeezers;
- Anchor remover machines;
- Multi-screw spiker machines;
- Multi-unscrew spiker machines;
- Multi drill/screw spiker machines;
- Production clip applicator/remover machines;
- Rail heater cars;
- Rail lifter production plate inserters;
- Spike driving machines;
- Spike puller machines; and
- Production profile grinders.

UP added that the basic configuration of some of these machines may change in the future and that, if future design changes result in a need for, or added value of, a windshield, UP would support the installation of a windshield.

Having reviewed UP's petition, FRA makes clear that it did not intend the rule to require that windshields be installed on all new on-track roadway maintenance machines. FRA intended to require that when windows are installed on new on-track roadway maintenance machines, they are made of safety glass or other material with similar properties. In addition, FRA intended that all such machines with windshields have power windshield wipers or suitable alternatives that provide the operator an equivalent level of vision if windshield wipers are incompatible with the windshield material.

Clearly, all machines with enclosed cabs, which necessarily require a windshield for the operator to see through, are subject to the requirements of this section. Yet, FRA does not intend to define the requirements of this section expressly in terms of machines with enclosed cabs. FRA believes its intent is more clearly conveyed by revising the text to state that the requirements of this paragraph apply only to new on-track roadway maintenance machines designed with windshields. FRA has amended the rule accordingly. Consequently, if a new on-track roadway maintenance machine is designed with a windshield, the windshield must be made of safety glass, or its equivalent, and be cleaned by power windshield wipers, or a suitable alternative means as appropriate.

In regard to the rail anchor applicator and other on-track roadway maintenance machines cited by UP for exclusion from the requirements of this paragraph, such machines are not subject to this paragraph's requirements as long as they are not designed with windshields. Based on UP's representation that these machines are not designed with windshields, they are thereby excluded from the requirements of this paragraph as long as that representation remains true.

Section 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. Pursuant to § 214.7, an *existing* on-track roadway maintenance machine is defined as any on-track roadway maintenance machine other than a new on-track roadway maintenance machine. Consequently, an existing on-track roadway maintenance machine is any on-track roadway maintenance machine in existence or ordered on or before December 26, 2003, or completed on or before September 27, 2004.

Paragraph (a) of the final rule required that each roadway worker transported on an existing on-track roadway maintenance machine have a safe and secure position that also provides protection from moving parts of the machine that could entangle clothing or body extremities. *See* 68 FR 44409. Following publication of the final rule, it became clear to FRA that this paragraph should be combined with § 214.517(g) of the final rule. Section § 214.517(g) also contained requirements for safe and secure positions for roadway workers riding on existing roadway maintenance machines. *See* 68 FR 44410. Specifically, § 214.517(g), like all of § 214.517, applied to existing on-track roadway maintenance machines manufactured on or after January 1, 1991, and required such machines to be equipped with handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine. *Id.*

FRA believes it unnecessary and potentially confusing to have two requirements in two separate sections concerning safe and secure positions for roadway workers riding on existing on-track roadway maintenance machines. Although the final rule carried forward these same requirements as proposed in the NPRM, the requirements contained in § 214.513(a) should have been combined with those contained in § 214.517(g) of the final rule. For a position to be "safe and secure" for a roadway worker to ride on an existing on-track roadway maintenance machine, the position must necessarily have handholds or handrails, or both, which the worker may grasp, or a secure seat or bench on which the worker may sit. In fact, in the preamble discussion of § 214.513(a) in the final rule, FRA stated that safe and secure positions include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. *See* 68 FR 44397.

As revised, § 214.513(a) requires that each existing on-track roadway maintenance machine have a safe and secure position with handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine, and each such position shall be protected from moving parts of the machine. As noted above, FRA believes that this revision to § 214.513(a) and consolidation of the rule do not substantively change the rule's requirements.

Section 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After January 1, 1991

This section specifies requirements for existing on-track roadway maintenance machines manufactured on or after January 1, 1991. Consequently, on-track roadway maintenance machines manufactured prior to 1991 are exempt from the requirements contained in this section. Existing on-track roadway maintenance machines that are subject to the requirements of this section must conform to these requirements after March 28, 2005.

Paragraph (b) of this section in the final rule provided that an existing on-track roadway maintenance machine have an operative heater when the ambient temperature is less than 50 degrees Fahrenheit, if the machine were or had been equipped with a heater. *See* 68 FR 44409, 44410. In preparing the final rule, FRA had modified the text of the proposed rule which, in part, specifically applied to a machine "equipped with a heater by the manufacturer." *See* 66 FR 1944. FRA's modification to the text of the proposed rule made clear that the requirement also applied to machines that had previously been equipped with heaters that had since been removed. In addition, FRA revised the text that limited the application of this section to heaters equipped by the manufacturers of the on-track roadway maintenance machines. FRA noted that heaters could have been installed after the machines were manufactured, and it was not evident to FRA why heaters installed after manufacture should not be subject to the requirements of this paragraph. *See* 68 FR 44399.

In petitioning for reconsideration of this paragraph's requirements, the AAR

stated that FRA should not apply this paragraph's requirements to machines that are or have previously been equipped with unauthorized heaters installed by railroad employees. Therefore, the AAR suggested that FRA amend paragraph (b) by limiting its application to heaters "installed by the manufacturer or the railroad." FRA has adopted the AAR's suggestion. FRA recognizes that it did not intend to include within this paragraph's requirements heaters that had not been installed by the manufacturer or the railroad, and FRA believes that the suggested change fully addresses FRA's concern as stated in the final rule. As amended, paragraph (b) requires that each existing on-track roadway maintenance machine manufactured on or after January 1, 1991, have an operative heater when the machine is operated at an ambient temperature less than 50 degrees Fahrenheit and is equipped with, or has been equipped with, a heater installed by the manufacturer or the railroad.

As discussed in the analysis of § 214.513(a) above, FRA has removed paragraph (g) of § 214.517. Please see the above discussion of § 214.513(a) for a detailed explanation as to why this paragraph has been removed.

Section 214.518 Safe and Secure Positions for Riders

This section contains the requirements for identifying safe and secure positions for roadway workers riding on on-track roadway maintenance machines. The final rule prohibits a roadway worker (other than the machine operator) from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice. *See* 68 FR 44410. The final rule also provided that this requirement become applicable as of the effective date of the final rule, September 26, 2003.

The AAR petitioned for reconsideration of this section's applicability date. The AAR pointed out that the proposed rule would have given railroads one year to implement the requirement to identify safe and secure positions for roadway workers riding on on-track roadway maintenance machines. *See* 66 FR 1944. The AAR noted that FRA decided not to defer implementation of the requirement in the final rule for one year because FRA found it less burdensome than the proposed requirement. *See* 68 FR 44400. The proposed rule would have required railroads to provide written notice on all roadway maintenance machines—to identify safe and secure positions for workers on machines permitted to transport them, as well as to make known the prohibition against riding on machines on which workers were not permitted to ride. Instead, the final rule requires railroads to provide written notice only on machines permitted to transport riders. Nonetheless, the AAR stated that a deferral of the applicability date is necessary. According to the AAR, in many cases railroads would be unable to use stencils or decals to comply with the requirement since they could not be designed, made, and applied in such a short time frame. Without a deferral of the applicability date, the AAR believed that railroads would be forced to use written documentation, and noted that written documentation may be less effective than more permanent indications such as stencils and decals. The AAR asserted that a six-month deferral of the applicability date would give railroads sufficient time to implement an effective program to apply stencils and decals. The AAR added that it would also give railroads time to apply these stencils and decals while maintenance is performed on roadway maintenance machinery that is out of service during the fall and winter months.

Following the AAR's submission, FRA sought clarification as to whether the AAR intended exclusively to use stencils and decals to identify safety and secure riding positions on roadway maintenance machines—without the need to identify such positions on documents kept on the machines. The AAR stated that it expected stencils and decals to be used in the vast majority of cases because they are more "permanent." Nevertheless, the AAR believed the option to identify safe and secure riding positions on documents kept on the machines to be essential, because in some cases stencils or decals are not practical. The AAR cited the example of large machines that can hold many people, such as the P–811 tie laying machine, for which stencils or decals would not be sufficient to identify safe and secure positions for riders. The AAR stated that written instructions would be more effective to communicate where to ride on this type of machine, as well as on large and complex machines such as big tampers, liners, and undercutters. In addition, the AAR noted that there will be machines on which stencils and decals cannot be readily applied to identify safe and secure riding positions. In this regard, the AAR cited the example of a safe riding location consisting of a grated floor and a pole for a rider to hold, but without a logical place to apply a stencil or a decal identifying the proper place for riding on the machine.

Having reconsidered the requirements of this section, FRA has to decided to defer this section's applicability date. As amended, the requirements of this section become applicable on or after March 1, 2004. FRA understands from the AAR's submission that in the vast majority of cases railroads will use stencils or decals to identify safe and secure riding positions on roadway maintenance machines. FRA encourages the use of stencils or decals, or both, to identify safe and secure riding positions for workers on roadway maintenance machines. In addition, FRA recognizes that a significant number of roadway maintenance machines are out of service during the months of cold weather. Consequently, during this time, railroads would have the opportunity to stencil or apply decals to out-of-service roadway maintenance machines as they undergo normal maintenance, thereby minimizing the cost of compliance. FRA believes that deferring the applicability date to March 1, 2004, affords railroads sufficient time to stencil or apply decals to identify safe and secure riding positions on those machines they intend to so mark. Moreover, FRA expects that for those machines whose safe and secure riding positions will be identified on documents kept on the machines, and therefore will not necessitate the work of physically marking the positions, extending the applicability date to March 1, 2004, is clearly sufficient. (FRA notes that it makes no specific finding as to the impracticability or impracticality of stencilling or applying decals to the roadway maintenance machines cited by the AAR in its clarifying submission, as railroads continue to have the option of using documents kept on the machines to identify safe and secure riding positions in circumstances as they deem appropriate.)

FRA makes clear that, even though it is extending the time to identify safe and secure positions for workers riding on roadway maintenance machines, it is not extending the time to provide the safe and secure positions themselves for workers riding on these machines. For instance, pursuant to § 214.513, each "existing" on-track roadway maintenance machine must have a safe and secure position with handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine, as noted above. Each position must also be protected from moving parts of the machine. Since an "existing" on-track roadway maintenance machine is any

on-track roadway maintenance machine in existence or ordered on or before December 26, 2003, or completed on or before September 27, 2004, the regulation will continue to require that every worker riding a roadway maintenance machine be provided a safe and secure position. FRA is extending only the compliance date to identify such positions on the machines.

Section 214.521 Flagging Equipment for On-Track Roadway Maintenance Machines and Hi-rail Vehicles

This section requires that flagging kits be available when on-track roadway maintenance machines and hi-rail vehicles are operated over trackage subject to a railroad operating rule requiring flagging. Flagging kits must comply with the requirements specified in the operating rules of the railroad over which the equipment is operated. This requirement applies to each on-track roadway maintenance machine and hi-rail vehicle that is operated alone or as the leading or trailing piece of equipment in a roadway work group operating under the same occupancy authority. Flagging kits are not required for roadway maintenance machines and hi-rail vehicles that are operated in the middle of a single roadway work group. However, the vehicles must be under the same occupancy authority to be considered part of a single group.

Following publication of the final rule, FRA recognized that this section could state more clearly which equipment is subject to the requirements. Accordingly, FRA has slightly revised the rule text and changed the section's format to make the requirements clearer. However, FRA has made no substantive change to the requirements of this section. FRA has simply restated the requirements in a different way to make them more comprehensible.

Appendix A to Part 214—Schedule of Civil Penalties

Appendix A to this part contains the schedule of civil penalties associated with violations of the regulations under subpart D to part 214. FRA is making one change to this schedule in conformance with a change to § 214.517, which is discussed above.

Regulatory Impact/Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Prior to issuing the July 28, 2003 final rule, FRA prepared and placed in the docket a regulatory analysis addressing the economic impact of the final rule. The rule was evaluated in accordance with existing policies and procedures and was considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (*see* 44 FR 11034, February 26, 1979). (For a more detailed discussion, *see* 68 FR 44405.) This response to the petitions for reconsideration of the final rule is likewise considered to be non-significant under both Executive Order 12866 and DOT policies and procedures. This regulatory action generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule. In particular, deferring the applicability date of § 214.518 will reduce the cost of complying with the rule. However, the actual cost reduction has not been calculated. Nevertheless, this regulatory action will have a minimal net effect on FRA's original analysis of the benefits and costs associated with the final rule.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of rules to assess their impact on small entities. Prior to issuing the July 28, 2003 final rule, FRA prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assessed the small entity impact by the rule. FRA certified that the final rule is not expected to have a "significant" economic impact on a "substantial" number of small entities under the Regulatory Flexibility Act and Executive Order 13272. (For a more detailed discussion, *see* 68 FR 44405, 44406.) This response to the petitions for reconsideration of the final rule generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule. Consequently, FRA certifies that this regulatory action is not expected to have a "significant" economic impact on a "substantial" number of small entities under the Regulatory Flexibility Act and Executive Order 13272. FRA concludes that there are no substantial economic impacts on small units of government, business, or other organizations arising from this regulatory action.

Paperwork Reduction Act

This response to the petitions for reconsideration of the final rule changes none of the information collection requirements contained in the final rule. It changes neither any individual requirement's burden nor the total burden for this collection of information.

Environmental Impact

FRA has evaluated this response to the petitions for reconsideration of the final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This regulatory action meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

FRA has analyzed this response to the petitions for reconsideration of the final rule in accordance with the principles and criteria contained in Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. In the NPRM, FRA acknowledged that the rule as proposed could have federalism implications. The governance of safety of hi-rail vehicles could have an unintended effect on State laws addressing the safety of these vehicles as they are operated over roads and highways, even though the rule is meant to cover the safety of hi-rail vehicles only while they are operated on railroad tracks. Although the requirements for hi-rail vehicles are not intended to preempt any State laws addressing motor vehicles, FRA requested comment concerning what State laws, if any, could be impacted by this rule. FRA received no comment in response to the request.

The RSAC, which recommended the proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials and the Association of State Rail Safety Managers. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. In light of the above, FRA concludes that this response to the petitions for reconsideration of the final rule has no federalism implications.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate

requirements specifically set forth in law." (See Section 201). Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *" detailing the effect on State, local and tribal governments and the private sector. This response to the petitions for reconsideration of the final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." *See* 66 FR 28355; May 22, 2001. Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to the petitions for reconsideration of the final rule in accordance with Executive Order 13211. FRA has determined that this regulatory action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

Privacy Act

Anyone is able to search the electronic form of all public submissions to any of our dockets by the name of the individual making the submission (or signing the submission, if made on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or by visiting http://dms.dot.gov.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and record keeping requirements.

The Final Rule

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

■ 2. Section 214.507 is amended by revising paragraph (a)(4) to read as follows:

§ 214.507 Required safety equipment for new on-track roadway maintenance machines.

(a) * * *

(4) A windshield with safety glass, or other material with similar properties, if the machine is designed with a windshield. Each new on-track roadway maintenance machine designed with a windshield shall also have power windshield wipers or suitable alternatives that provide the machine operator an equivalent level of vision if windshield wipers are incompatible with the windshield material:

* * * * *

■ 3. Section 214.513 is amended by revising paragraph (a) to read as follows:

§ 214.513 Retrofitting of existing on-track roadway maintenance machines; general.

(a) Each existing on-track roadway maintenance machine shall have a safe and secure position with handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine. Each position shall be protected from moving parts of the machine.

* * * * *

■ 4. Section 214.517 is amended by revising paragraph (b) as follows and removing paragraph (g):

§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.

* * * * *

(b) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees Fahrenheit and is equipped with, or has been equipped with, a heater installed by the manufacturer or the railroad.

* * * * *

■ 5. Section 214.518 is amended by revising it to read as follows:

§ 214.518 Safe and secure positions for riders.

On or after March 1, 2004, a roadway worker, other than the machine operator, is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

■ 6. Section 214.521 is amended by revising it to read as follows:

§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.

Each on-track roadway maintenance machine and hi-rail vehicle shall have on board a flagging kit that complies with the operating rules of the railroad if:

(a) The equipment is operated over trackage subject to a railroad operating rule requiring flagging; and

(b)(1) The equipment is not part of a roadway work group; or

(2) The equipment is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

■ 7. Appendix A to part 214 is amended by removing the entry for section 214.517(g).

Issued in Washington, DC on February 9, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–4251 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Santa Ana Sucker (*Catostomus santaanae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Santa Ana sucker (*Catostomus santaanae*) pursuant to the

Endangered Species Act of 1973, as amended (Act). This threatened species is now restricted to three noncontiguous populations in three different stream systems in southern California: The lower and middle Santa Ana River in San Bernardino, Riverside, and Orange counties; the East, West, and North Forks of the San Gabriel River in Los Angeles County; and lower Big Tujunga Creek in Los Angeles County (Moyle *et al.* 1995, Swift *et al.* 1993).

DATES: This rule becomes effective on February 26, 2004.

ADDRESSES: The supporting information used in this rulemaking is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the address listed above (telephone 760/431–9440 or facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to slow (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976). Santa Ana suckers appear to be most abundant where the water is cool (less than 22 °Celsius [C]) (72 °Fahrenheit), unpolluted and clear, although they can tolerate and survive in seasonally turbid water (Moyle 1976, Moyle and Yoshiyama 1992, Saiki 2000). Santa Ana suckers feed mostly on algae, which they scrape off of rocks and other hard substrates, with aquatic insects making up a very small component of their diet. Larger fish generally feed more on insects than do smaller fish (Greenfield *et al.* 1970, Moyle 1976).

Santa Ana suckers generally live no more than 3 years (Greenfield *et al.* 1970). Spawning generally occurs from early April to early July. A peak in spawning activity occurs in late May and June (Greenfield *et al.* 1970, Moyle 1976). However, the spawning period may be variable and protracted. Recent field surveys on the East Fork of the San Gabriel River found evidence of an extended spawning period. These surveys found small juveniles (less than 30 millimeters [mm] standard length (1.2 inch [in]) in December 1998, and March of 1999 at the San Gabriel River site (Saiki 2000). These data indicate that spawning may be very protracted in this stream, and begin as early as November. Fecundity appears to be exceptionally high for a small sucker species (Moyle 1976). Total fecundity of six females varying in size from 78 mm (3.1 in) to 158 mm (6.2 in) ranged from 4,423 to 16,151 eggs, respectively (Greenfield *et al.* 1970). The combination of early sexual maturity, protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that can decimate populations (Moyle 1976).

The Santa Ana sucker appears to be native to the larger streams of the Los Angeles Basin; the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands of the Los Angeles and San Gabriel river systems, and to at least Pump House #1 (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993). The species has experienced declines throughout most of its range (Moyle *et al.* 1995; Swift *et al.* 1993), and is now restricted to three noncontiguous populations: (1) Lower and middle Santa Ana River; (2) East, West, and North Forks of the San Gabriel River; and (3) lower Big Tujunga Creek.

Reasons for Dispensing With Notice and Comment Procedures and Making the Rule Immediately Effective

The Administrative Procedure Act (APA) generally requires that an agency provide public notice of and an opportunity for public comment on all proposed rulemakings (5 U.S.C. 553). However, section 553(b)(B) recognizes an exception to those requirements when for good cause an agency finds (and incorporates the finding and a brief statement of the reasons therefore into the rule) that notice and public procedure thereon are "impracticable, unnecessary or contrary to the public interest." Similarly, section 553(d) of the APA allows publication of a final rule to take effect immediately upon publication if the agency for good cause so provides in the final rule. The Service finds good cause exists with regard to this final rule designating critical habitat for the Santa Ana sucker to forgo the standard notice and comment procedure provided by the APA because compliance with that procedure would be impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B). The Service further finds good cause under 5 U.S.C. 553(d) to make this final rule effective immediately upon publication in the **Federal Register**. The bases for our "good cause" findings are summarized below.

The Service is required by court order to designate critical habitat for the Santa Ana sucker by February 21, 2004. We have determined that we do not have sufficient time or budgetary resources to promulgate this rule under the standard notice-and-comment procedures mandated by the APA at 5 U.S.C. 533 and still meet the court's deadline. On February 26, 2003, the United States District Court for the Northern District of California held that the Service had failed to designate critical habitat for the listed populations of Santa Ana sucker within the statutory timeframe and ordered the Service to complete a final critical habitat designation for the Santa Ana sucker by February 21, 2004 (*California Trout* v. *DOI*, No. 97–3779 (N.D.Cal.)). However, due to lack of funding, the Service was unable to begin work on the critical habitat designation in Fiscal Year (FY) 2003. Complying with numerous court orders and court-approved settlement agreements caused the Service to exhaust essentially its entire FY 2003 budget for critical habitat designations by the end of July, well before the end of the fiscal year. Anticipating this result, the Service suspended work on a number of designations that were required by court orders or settlement agreements until additional funding became available. This included the designation of critical habitat for the Santa Ana sucker.

The Service initiated work on the proposed designation for the Santa Ana sucker on October 1, 2003, the beginning of FY 2004, even though we had not yet received a final appropriation for this fiscal year. As soon as we received a final appropriation, we requested more time from the district court to complete a proposed and final designation. In our request we documented for the court the numerous steps that must be completed in order to promulgate a final critical habitat rule and time required to complete those steps and produce a legally defensible rule. We projected that a period of 24 months beginning on October 1, 2003, would be required to comply with applicable statutory requirements, including the mandated public review process. However, the court declined to grant our motion for additional time in her January 30, 2004, ruling from the bench, thereby keeping in effect the order that the Service complete a final critical habitat designation by February 21, 2004. Compliance with the APA-required notice-and-public comment procedure in promulgating a final critical habitat

designation for the Santa Ana sucker is impracticable given the Service's inability to work on the rule in FY 2003 due to inadequate budgetary resources and the inadequate 4.5-month time period available in FY 2004 to publish a proposed rule, allow for public comment, complete an economic analysis of the proposed designation, respond to public comment, and finalize the critical habitat designation. Therefore, we find good cause for and invoke the exception under section 553(b)(B) of the APA to publish this final rule without following the standard public notice and comment procedure.

In its 2003 order, the court also enjoined the Service from consulting under section 7(a)(2) of the Act until we publish a final rule designating critical habitat for the Santa Ana sucker. Under section 7, each Federal agency is required to consult with us to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the adverse modification of the designated critical habitat, if any, of the species. Consultation ensures that impacts to listed species are fully considered by the Federal action agency before it proceeds with the proposed action; consultation also ensures that the action does not go forward if it is likely to jeopardize the continued existence of the species. In addition, where we conclude that the proposed Federal action is not likely to jeopardize the species, section 7 requires us to prescribe reasonable and prudent measures, and specific terms and conditions to implement those measures, which the action agency, and its applicant, if any, must carry out to minimize the impacts of any take of a listed animal species likely to result from the proposed Federal action (16 U.S.C. 1536(b)(4)).

As a consequence of the injunction on consulting on any proposed Federal action that may affect the Santa Ana sucker, Federal action agencies and the Service are unable to meet our respective responsibilities pursuant to section 7(a)(2) of the Act. In the case of emergencies involving imminent risks to human health and safety (*e.g.*, replacement of bridges threatened by floods), Federal agencies may be forced to undertake the projects absent consultation with us and thus without benefit of our determination regarding potential jeopardy and identification of reasonable and prudent alternatives to the proposed action that would avoid jeopardy. In addition, where such projects are not likely to result in jeopardy, the proscription on consultation eliminates our ability to identify reasonable and prudent measures to minimize the impacts of take on the sucker resulting from the proposed project. We are currently precluded from consulting with agencies even after the emergency has passed to evaluate the impacts of the emergency actions on the Santa Ana sucker and provide measures to the agencies to minimize the effects of any take on the species. Our current inability to complete section 7 consultations constitutes an emergency posing a significant risk to the well-being of Santa Ana sucker because of our inability to evaluate and minimize or eliminate threats to the species from proposed Federal actions that are also necessary to protect public health and safety.

In addition, the injunction has had the immediate effect of significantly delaying the orderly, expeditious, and timely completion of projects that are currently being planned and are needed to protect human life and safety. Examples of projects that would affect the sucker that have been delayed as a result of the Court's injunction include the replacement of the Van Buren Boulevard Bridge to meet seismic safety standards and the replacement of the River Road Bridge due to flooding.

The Van Buren Boulevard bridge replacement project in Riverside County would replace the existing bridge with a new longer span that would have no support pilings within the stream channel and increase the width of the bridge from two lanes to four lanes. The bridge is being replaced because of the need to meet updated seismic safety requirements. This bridge provides the only crossing of the Santa Ana River for a 9-mile radius. In the next 40 years, there is an 80 percent chance for an earthquake to occur that can damage or destroy the existing bridge. This bridge provides for local traffic between City of Riverside and the communities of Pedley, Glen Avon, Mira Loma, and Jurupa. Average daily traffic at this Santa Ana River bridge crossing in 2001 was 54,300 vehicles. The 2005 traffic projection at this location is 57,500 average daily vehicles. An earthquake of this magnitude would eliminate an important bridge crossing of the Santa Ana River for local use and emergency vehicles. The driving distance would increase by as much as nine miles for emergency response vehicles. The Federal Highway Administration requested initiation of formal consultation on this project with the Service on November 14, 2002, to address effects of project implementation on the Santa Ana sucker and least Bell's vireo. The biological opinion was due to be issued on March 29, 2003.

The replacement of the River Road bridge is necessary because the existing bridge is at high risk of being damaged by high flows in the Santa Ana River. The River Road bridge is particularly sensitive to high flows because of its low clearance above the existing riverbed. During high flows, large amounts of sediment and debris are deposited adjacent to the bridge causing floodwaters to overtop the bridge. Under these flood conditions, the high flows will eventually push the bridge off its pilings and cause a catastrophic loss of the bridge. Riverside County estimates that if two or more 2-year storm events were to occur consecutively, the bridge may be shifted off its pilings and portions of the bridge could be destroyed. In the last 10 years, the existing bridge and approach roadways were closed to traffic four times because the bridge had been shifted off its pilings as a result of floodwaters. Although a sand mining operation has been implemented as a temporary measure to provide additional freeboard for flood flows, this measure will not be sufficient to protect the River Road bridge if multiple and consecutive storms affect this watershed. Therefore, the replacement of the existing River Road bridge with a new bridge that provides a greater clearance above the existing riverbed is needed. Replacement of the River Road bridge had been anticipated to be completed in 2006 and requires funding from the Federal Highway Administration. Because replacement of the bridge "may affect" the Santa Ana sucker, a section 7 consultation with Federal Highway Administration will be required. In addition to providing traffic circulation to residents, the existing River Road bridge is the only emergency vehicle access route across the Santa Ana River within a 7-mile radius for the cities of Norco and Corona and unincorporated Riverside County. If the River Road bridge is damaged by storms and cannot be used, then driving distance for emergency response vehicles will be increased by at least seven miles.

As described by the above examples, the injunction has resulted in delays for projects that are needed to protect human life and safety. The injunction and ensuing delays may very well be the root cause of future emergencies that involve imminent risks to human health and safety because the Federal action agency was unable to complete their projects in an orderly, expeditious, and timely manner. For example, the delay

in completing the bridge replacement projects significantly increases the risk of catastrophic losses of these bridges from seismic and flooding events and significant delays in providing emergency response services.

As is the nature of rivers and weather, flood events can happen swiftly and unpredictably with dire consequences to human health and safety and loss of property. Structures and property along the Santa Ana River are at risk from emergency flood events. Apart from the specific projects identified above, other emergency conditions along the Santa Ana River may be avoided by the orderly, expeditious, and timely completion of the draft Programmatic Consultation on the Santa Ana Sucker Conservation Program and Associated Maintenance and Operation Activities of Existing Water Facilities on the Santa Ana River (SAS Programmatic Consultation). For example, Riverside County Flood Control and Water Conservation District (RCFCD) could receive authorization from the U.S. Army Corps of Engineers to maintain the structural integrity of levees and groins that protect industrial, commercial, and residential property along the Santa Ana River as a result of the SAS Programmatic Consultation. The RCFCD has predicted that the loss of the levee could result in the introduction of pollutants from residential, commercial, and industrial properties into the Santa Ana River as well as the loss of up to 3,000 acres of developed floodplain. The introduction of pollutants would significantly degrade the water quality and habitat of the Santa Ana River, as well as result in mortality of suckers. In addition, the loss of the levees could result in a loss of life and property. On September 23, 2003, the RCFCD notified the Service and the Corps that a portion of the northwestern levee along the Santa Ana River was being undermined by the low-flow channel. The RCFCD proposed to divert the low-flow channel away from the levee to prevent the destruction of the levee. The Corps declared the proposed diversion an emergency action, and requested that the Service provide them with avoidance and minimization measures for the Santa Ana sucker. Because of the injunction we were unable to complete an emergency section 7 consultation with the Corps, but we did recommend measures to avoid and minimize impacts to the sucker. The Corps issued an emergency Regional General Permit No. 63 permit that incorporated our recommended measures and RCFCD completed the diversion and repair of the levees. The diversion of the low-flow channel away from the levees was an action that was anticipated to be addressed in the SAS Programmatic Consultation. If this action had been addressed as part of a completed consultation, the need for an emergency permit would have been eliminated and the risk to human life and property would have been significantly reduced.

The injunction against section 7 consultations is also preventing the Service from completing consultations on major habitat restoration projects in the Santa Ana River designed to improve the status of the sucker and its habitat; this also constitutes an emergency posing a significant risk to the well-being of the Santa Ana sucker. The SAS Conservation Program is a multi-agency partnership of Federal and local government agencies and the private sector that encourages a river-wide approach to conservation of the Santa Ana sucker within the Santa Ana River and its tributaries; increases the knowledge base to implement recovery strategies for the sucker in the Santa Ana River; ensures that each participating agency minimizes, to the extent possible, effects of routine activities on the sucker; and develops habitat restoration and enhancement techniques for degraded habitat. The SAS Conservation Program has already benefited the Santa Ana sucker by improving our recommended avoidance and minimization measures for ongoing activities. For example, research funded by the SAS Conservation Program has resulted in a detailed description of spawning and nursery habitat. In addition, appropriate habitat restoration techniques are being developed that will be essential to maintain the sucker population in the Santa Ana River.

Finally, the current injunction has prevented the Service from completing internal consultation on the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) because the Santa Ana sucker is included as a "covered species adequately conserved" in the proposed plan and will otherwise be affected by the plan. The Western Riverside MSHCP will conserve over 94 percent of the modeled habitat within western Riverside County and all of the known and potential refugia and spawning areas within the MSHCP conservation area. In addition, the Western Riverside MSHCP will assess and implement measures to improve water quality, remove nonnative competitor and predator species, and eliminate barriers to fish passage within the Santa Ana River. The removal of nonnative predatory species should improve and secure the survival of the sucker in the Santa Ana River. The removal of barriers to fish passage should return the population to a contiguous breeding population. In addition, the maintenance and improvement of water quality standards are essential to a species that inhabits the highly urbanized Santa Ana River watershed, and depends on tertiary-treated wastewater for much of its spawning habitat.

Until a final critical habitat rule is published for the Santa Ana sucker, the injunction will remain in place and prevent completion of section 7 consultations on important projects necessary to protect public health and safety while also protecting the sucker, or on projects specifically designed to benefit the sucker. We therefore find that good cause exists under 5 U.S.C. 553(b)(B) to exempt this final rule from APA notice and comment procedures. In the unusual circumstances presented here, compliance with those procedures would be contrary to the public interest.

We also find that good cause exists under 5 U.S.C. 553(d) to make this final rule effective immediately for the reasons stated above with regard to section 553(b)(B). The immediate designation of critical habitat is necessary for the following reasons: (1) To comply with the district court's order; (2) to conduct section 7 consultations and prepare written concurrences regarding projects funded, permitted, or carried out by Federal agencies that may affect the Santa Ana sucker or its essential habitat; (3) to ensure those activities will not jeopardize the continued existence of the species; and (4) to ensure Federal agencies can comply with the requirements of the Act, including section 9.

Previous Federal Action

Please see the final listing rule for the Santa Ana sucker for a description of Federal actions through April 2000 (65 FR 19686; April 12, 2000). On July 9, 2001, California Trout, Inc., the California-Nevada Chapter of the American Fisheries Society, the Center for Biological Diversity, and the Friends of the River (plaintiffs) filed a 60-day notice of intent to sue over our failure to designate critical habitat for the Santa Ana sucker. The plaintiffs filed a second amended complaint for declaratory judgment and injunctive relief on March 19, 2002, with the U.S. District Court for the Northern District of California. On February 26, 2003, the district court ordered the Service to designate a final critical habitat for the Santa Ana sucker by no later than February 21, 2004, and enjoined the Service from issuing any

section 7 concurrence or biological opinion on a proposed Federal action that "may affect" the Santa Ana sucker until such time as the final critical habitat for the Santa Ana sucker is designated.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection and those specific areas outside the geographic area occupied by the species at the time it is listed upon a determination by the Service that such areas are essential for the conservation of the species. Under section 4(a)(3) and (b)(2) of the Act we are required to designate critical habitat to the maximum extent prudent and determinable on the basis of the best scientific data available and after taking into account the economic impact of specifying any particular area as critical habitat.

In the final listing rule (65 FR 19686), we indicated that designation of critical habitat was not determinable because the "knowledge and understanding of the biological needs and environmental limitations of the Santa Ana sucker and the primary constituent elements of its habitat are insufficient to determine critical habitat for the fish." We also indicated that the Orange County Water District, County of Orange, Los Angeles County Department of Public Works, National Fish and Wildlife Foundation, and the Biological Resources Division of the U.S. Geological Survey were funding and implementing research on the environmental limitations of the Santa Ana sucker. This research has been completed and a final report has been published (Saiki 2000). Based on the available information on the biology of the Santa Ana sucker, we now believe that critical habitat for the Santa Ana sucker is determinable. We also find that there is no basis for a not prudent finding because we do not believe that the designation of critical habitat will result in an increase in the degree of threat from activities prohibited under section 9 of the Act. We are not aware of any apparent habitat destruction that has occurred since the listing of the Santa Ana sucker. Therefore, we find that designation of critical habitat for the Santa Ana sucker is prudent and determinable.

Methods

We mapped critical habitat based on the known distribution and habitat requirements of the Santa Ana sucker using published literature and available reports. We delineated essential habitat on aerial and satellite imagery on a GIS system along each stream reach. Essential habitat is the stream and the associated riparian habitat.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas are critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Santa Ana sucker were determined by reviewing studies that examined the habitat requirements and ecology of the sucker in the Santa Ana River (Allen 2003; Baskin and Haglund 2001; Haglund *et al.* 2003; Saiki 2000; Swift 2001), the San Gabriel River (Saiki 2000; Haglund and Baskin 2002), and the Santa Clara River (Greenfield *et al.* 1970). Primary constituent elements essential for the conservation of the sucker are found in an ecosystem that includes a functioning hydrological system that experiences peaks and ebbs in water volume and maintains a sand, gravel, and cobble substrate in a mosaic of sandy stream margins, deep water pools, riffles (*i.e.*, well-oxygenated, shallow water over rough substrate), and runs (*i.e.*, shallow water over generally smooth substrate); sufficient water volume and quality; and complex, native floral and faunal associations.

The Santa Ana sucker evolved in a typical southern Californian hydrological regime that included periodic flooding (Greenfield *et al.* 1970). Life history characteristics, such as prolonged breeding periods and short hatching times, have allowed the sucker to survive in dynamic hydrological systems. Periodic floods may also remove exotic predators and competitors (Swift 2001). Therefore, a functioning hydrological system should experience peaks and ebbs in the water volume throughout the year. The hydrological regime should also maintain a mosaic of sand, gravel, cobble, and boulder substrates in a series of sandy stream margins, riffles, runs, and pools. Adult suckers spawn in gravel beds while larvae and juveniles are generally associated with shallow, sandy margins during their development (Haglund *et al.* 2003). Gravel and cobble substrate, often associated with riffles, provide habitat for algae and macroinvertebrates, the primary prey of adult suckers. Pools provide food for adult suckers and refuge from warm water (Allen 2003).

Sufficient water volume, described in velocity and depth, is an important element of habitat essential for the conservation of the Santa Ana sucker. Water volume may vary between seasons, but enough water should be present during the spawning season (March 1–June 30) to support reproduction and larval development. For the remainder of the year, water volume must be sufficient to support prey of the sucker and the development and growth of the sucker. In the San Gabriel River, Haglund and Baskin (2002) found that adult and juvenile suckers were present in bottom velocities between 0.17 and 0.68 feet per second, while mid-column velocities reached 1.95 feet per second. Haglund *et al.* (2003) reported spawning in bottom velocities of 0.65 and 0.77 feet per second.

Depth is also an important descriptor of water volume. Saiki (2000) showed that suckers were fairly equally distributed among depths of 1 to 39 cm in the Santa Ana River and among depths of 1 to 69 cm in the San Gabriel River. In the Santa Ana River, Swift (2001) reported detecting suckers in depths as great as 150 cm. Suckers were present in pools as deep as 200 to 300 cm (Brandt Allen, University of California at Davis, pers. comm. 2004). Suckers likely prefer various water depths depending on their life history stage and activity. Larval and early juvenile suckers prefer shallow margins of 5 to 10 cm in depth (Haglund *et al.* 2003) while adult suckers prefer deep pools of 40 cm or greater (Haglund and Baskin 2002). Adult suckers prefer deep pools for feeding and refuge, riffles of varying depths for spawning, and riffles and runs of varying depths for movement between pools.

Water quality must support sucker reproduction, diet, and development. Saiki (2000) reported sucker abundance was negatively correlated with turbidity. Saiki (2000) found that suckers were

more abundant at a site in the San Gabriel River, where turbidity averaged 5.5 Nephelometric turbidity units (NTUs) and ranged from 0.1 to 165.0 NTUs than at a site in the Santa Ana River, where turbidity averaged 21.7 NTUs and ranged from 0.6 to 405.0 NTUs. Suckers were not detected at a different site in the Santa Ana River, where turbidity averaged 57.4 NTUs and ranged from 1.9 to 214.0 NTUs (Saiki 2000). However, in 2000, Baskin and Haglund (2001) captured 10 suckers immediately upstream of this site in water that was between 85 and 112 NTUs. Therefore, a high turbidity level does not necessarily eliminate suckers from using habitat. Saiki (2000) determined that suckers likely avoid continuously turbid conditions but could survive in seasonally turbid conditions. In addition to turbidity, temperature appears to be a limiting factor in sucker distribution. Suckers were found in waters between 15 and 28 °C in the Santa Ana River and suckers likely avoid water over 30 °C (Swift 2001). Similarly, Greenfield *et al.* (1970) reported suckers from the Santa Clara River in water that was 10 to 26 °C.

Suitable sucker habitat must contain algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation. Suckers feed by scraping algae, insects, and detritus from gravel and cobble substrate (Greenfield *et al.* 1970; Saiki 2000). In addition, riparian vegetation and emergent aquatic vegetation moderate stream temperature (Allen 2003), and provide additional sources of detritus and insects (Diana 1995). Riparian and aquatic emergent vegetation can also provide refuge from predators. Therefore, complex native floral and faunal associations are required for sucker survival.

The primary constituent elements for the sucker are the following:

(1) A functioning hydrological system that experiences peaks and ebbs in the water volume throughout the year;

(2) A mosaic of sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools and shallow sandy stream margins;

(3) Water depths greater than 3 cm and water bottom velocities greater than 0.03 meters per second;

(4) Non-turbid conditions or only seasonally turbid conditions;

(5) Water temperatures less than 30 °C; and

(6) Stream habitat that includes algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation.

Critical Habitat Designation

The designated critical habitat encompasses Santa Ana sucker habitat throughout the range of the listed species in the United States (Los Angeles and San Bernardino Counties, California). Essential habitat for the Santa Ana sucker in San Bernardino, Riverside County and Orange County has been excluded under section 4(b)(2) of the Act. Areas designated as critical habitat are under Federal and private ownership. The approximate area of designated critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT AREA (AC (HA)) BY COUNTY AND LAND OWNERSHIP

[Estimates reflect the total area within critical habitat unit boundaries.]

County	Federal*	Local/State	Private	Total
Los Angeles	6,483 ac (2,624 ha)	0 ac	2,937 ac (1,189 ha)	9,420 ac (3,812 ha)
San Bernardino	3,582 ac (1,450 ha)	0 ac	8,127 ac (3,289 ha)	11,709 ac (4,738 ha)
Total	10,065 ac (4,074 ha)	0 ac	11,064 ac (4,478 ha)	21,129 ac (8,551 ha)

*Federal lands include National Forest lands.

We have designated three critical habitat units based on the geographical location of the three existing, listed populations of Santa Ana sucker. Major tributaries that are important for their role in contributing water, sediment, and improved water quality (components of the primary constituent elements) for the species are included. Each of these few remaining disjunct populations is essential to maintain genetic diversity, decrease the likelihood of the species becoming extinct due to small numbers, and decrease the likelihood of species extinction due to stochastic events (*e.g.*, floods) (Lande 1988, Saccheri *et al.* 1998). The fragmented and disjunct distribution of the species prevents any possibility that an extirpated population would recover. The areas being designated are either within the geographical area occupied by one of the three populations of Santa Ana sucker, contain those physical and biological features essential for the conservation of that population and may require special management considerations or protection, or are outside of the geographic area occupied by the species but are nevertheless essential for the conservation of the sucker. Descriptions of each unit and the reasons for designating them as critical habitat are presented below.

Map Unit 1: Santa Ana River Critical Habitat Unit (Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash), San Bernardino County, California (11,709 ac (4,738 ha))

The Santa Ana River Unit consists of Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash and the essential habitat along portions of the mainstem of the Santa Ana River and the following tributaries: City Creek, Mill Creek, Chino Creek, and Cucamonga Creek. The occupied essential habitat adjacent to Unit 1A (Northern Prado Basin) and the occupied essential habitat downstream from Unit 1B (Santa Ana Wash) has been excluded under section 4(b)(2). The Santa Ana River supports one of three listed populations of the Santa Ana sucker. Approximately 60 percent of the total remaining range of the listed Santa Ana sucker is in the Santa Ana River (65 FR 19686).

Our designation excludes essential occupied habitat along portions of the Santa Ana River that are within the draft Western Riverside Multiple Species Habitat Conservation Plan (Riverside County) or the SAS Conservation Program (Orange, Riverside, and San Bernardino counties). The bases for those exclusions are summarized below under "Section 4(b)(2) Exclusions."

We are designating Northern Prado Basin (Unit 1A) and Santa Ana Wash (Unit 1B) because these essential habitat areas are not covered by the draft Western Riverside County Multiple Species Habitat Conservation Plan or

the SAS Conservation Program. While Units 1A and 1B are not known to be occupied, they are essential for the conservation of the Santa Ana sucker because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; NOAA 2003); convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the downstream portions of the Santa Ana River occupied by the sucker. Moreover, the Northern Prado Basin Unit is contiguous with occupied habitat and may support the Santa Ana sucker. City Creek, a tributary of the Santa Ana River, was documented as containing Santa Ana suckers as recently as 1982, but has not been recently surveyed. Protection of these unoccupied areas is essential to provide the downstream habitat conditions necessary to maintain the Santa Ana River population of the sucker (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004).

Unit 1B is essential because it provides the source for preferred spawning and feeding substrate of the Santa Ana sucker. Although portions of Unit 1B (Santa Ana Wash) are generally dry during the summer, this portion of the river has a higher gradient and a greater percentage of gravel and cobble substrate than the occupied areas that are downstream (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004). Suckers spawn over gravel substrates where their eggs can adhere to gravel before hatching into larvae. Winter flows from upstream areas annually replenish this substrate and clean sand from it (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; Dr. Thomas Haglund, pers. comm. 2004; NOAA 2003). In addition, suckers feed by scraping algae, insects, and detritus from gravel and cobble. Therefore, the upstream source of spawning and feeding substrates (gravel and cobble) are essential to the reproductive ability and development of the sucker in the downstream occupied reaches (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; Dr. Thomas Haglund, pers. comm. 2004).

Unit 1A and Unit 1B are essential to the conservation of the sucker because they maintain a relatively natural hydrograph. The Santa Ana sucker evolved in the naturally dynamic hydrological systems of southern California. Therefore, as a larger intact river system has greater potential to provide a more natural hydrograph, Unit 1A and Unit 1B are essential to maintain the natural hydrograph of the Santa Ana River and ensure the continued existence of the sucker in the Santa Ana River (Dr. Thomas Haglund, pers. comm. 2004). The importance of a natural hydrograph for native fishes has been demonstrated for many systems (Moyle and Light 1996). For example, nonnative fishes can more easily invade systems where the natural hydrograph has been disrupted by dams and reservoirs and these nonnative fishes can contribute to the decline of native fishes through predation and competition (Moyle *et al.* 1986).

Unit 1A and Unit 1B are also essential because they maintain habitat for the southernmost extent of the existing distribution of the Santa Ana sucker. Consequently, these units enhance the long-term sustainability of the sucker by maintaining its genetic adaptive potential and a well-distributed geographical range to buffer the sucker's particular vulnerability to environmental fluctuations and catastrophes because of its limited number of populations.

Map Unit 2: San Gabriel River Critical Habitat Unit, Los Angeles County, California (5,765 ac (2,333 ha))

The San Gabriel River Unit consists of the West, North, and East Forks of the San Gabriel River and the following tributaries: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek. The San Gabriel River portion of the unit extends from the Cogswell Dam on the West Fork to the Bridge-of-No Return on the East Fork, and portions of the North Fork. Santa Ana sucker occupies the West, North, and East Forks of the San Gabriel River. Suckers occupy the West Fork from the Cogswell Dam to the San Gabriel Reservoir. The North Fork and East Fork are occupied by suckers upstream from the San Gabriel Reservoir. Suckers also occupy the following tributaries: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek.

Approximately 15 percent of the total remaining range of the listed Santa Ana sucker is in the San Gabriel River (65 FR 19686). Approximately 15 percent of its distribution in the San Gabriel River Basin occurs on private lands, and the remaining 85 percent occurs in the Angeles National Forest (65 FR 19686). This river has the least developed watershed of the three critical habitat units. Data gathered during sampling indicated that the San Gabriel River may contain the largest population of Santa Ana suckers (R. Ally, *in litt.* 1996; Mike Gusiti, CDFG, *in litt.* 1996; M. Wickman, *in litt.*, 1996; Juan Hernandez, CDFG, *in litt.* 1997; M. Saiki, pers. comm. 1999).

The San Gabriel River Unit is essential to the conservation of the sucker because the San Gabriel River drainage system supports one of only three extant populations of this listed species which has a highly fragmented and limited distribution. In addition, the San Gabriel River Unit provides the best remaining habitat capable of sustaining the Santa Ana sucker. Moyle and Yoshiyama (1992) consider the population of suckers in the San Gabriel River drainage to be the only viable population of the Santa Ana sucker within the species' native range (65 FR 19686). This population is found in the relatively undisturbed watershed of the Angeles National Forest, unlike the population within the Santa Ana River which is within a highly urbanized watershed that receives urban and agricultural run-off and other environmental contaminants. Thus, this unit supports a population that occurs within a relatively intact watershed that provides good water quality and thereby, ensures the conservation of the only extant population of listed suckers that will likely avoid the potential for chronic exposure to water quality degraded by urban run-off or tertiary-treated wastewater discharges.

Map Unit 3: Big Tujunga Creek Critical Habitat Unit, Los Angeles County, California (3,655 ac (1,479 ha))

The Big Tujunga Creek Unit consists of the stretch of Big Tujunga Creek between the Big Tujunga Dam and Hansen Dam and the following tributaries: Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek. The Santa Ana sucker occupies the Big Tujunga Creek between Big Tujunga Dam and Hansen Dam.

Approximately 25 percent of the total remaining range of the Santa Ana sucker is within the Big Tujunga Creek (65 FR 19686). In the Big Tujunga Creek, approximately 60 percent of the current range of the Santa Ana sucker occurs on private lands. The remaining 40 percent of the range occurs on Angeles National Forest lands managed by the U.S. Forest Service.

The Big Tujunga Creek Unit is essential to the conservation of the sucker because this stream segment

supports one of only three extant populations of this listed species which has a highly fragmented and limited distribution. In addition, the upstream portion of this population is largely contained within the Angeles National Forest and therefore is not exposed to the effects of urban run-off and tertiary treated wastewater discharge. This unit is also essential because it maintains habitat for the northernmost extent of the existing distribution of the Santa Ana sucker. Consequently, the unit enhances the long-term sustainability of the sucker by maintaining its genetic adaptive potential and a well-distributed geographical range to buffer the sucker's particular vulnerability to environmental fluctuations and catastrophes.

The tributaries to the Big Tujunga Creek that are within the unit (Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek) are not known to be occupied, but are essential to the conservation of the sucker because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish; convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the occupied portions of the Big Tujunga Creek. Similar to the Santa Ana River, these tributaries are essential to the Big Tujunga Creek sucker population because it they provide renewal of spawning and feeding substrates and peaks and ebbs in water volumes. These tributaries are particularly essential to the conservation of the sucker since the Big Tujunga Dam has reduced the transfer of sediment downstream and altered the natural flow in the upper Big Tujunga Creek. The sucker has been able to maintain its population in the Big Tujunga Creek despite the fragmented habitat and presence of nonnative species. Most likely, the sucker population has survived because of the presence of the relatively undisturbed condition of the tributaries to Big Tujunga Creek.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act allows the Secretary to exclude any area from critical habitat if she determines the benefits of such exclusion outweigh the benefits of specifying such area as part of critical habitat, unless, based on the best scientific and commercial data available, she determines that failure to designate the area as critical habitat will result in the extinction of the species. We have determined that the benefits of excluding essential habitat within the boundaries of the Western Riverside MSHCP and essential habitat within the area covered by SAS Conservation Program outweigh the benefits of including these areas as critical habitat. Exclusion of these areas will not result in the extinction of the sucker.

Exclusion of Critical Habitat Within the Draft Western Riverside Multiple Species Habitat Conservation Plan and the SAS Conservation Program

Draft Western Riverside Multiple Species Habitat Conservation Plan

The Western Riverside MSHCP has been in development for several years. Participants in the Western Riverside MSHCP include 14 cities; the County of Riverside (including the Riverside County Flood Control and Water Conservation District, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department); the California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside MSHCP is also being proposed as a subregional plan under the State's Natural Community Conservation Program (NCCP) and is being developed in cooperation with the California Department of Fish and Game. Within the 1.26 million-acre (510,000 ha) planning area of the Western Riverside MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will complement other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, Forest Service, and county park lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local bond measure to fund the acquisition of land in support of the MSHCP. On November 14, 2002, a notice of availability of a draft environmental impact report (EIS/EIR) and receipt of and application for an incidental take permit was accepted and published in the **Federal Register**. We accepted public comment on these documents until January 14, 2003. Subsequently, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

The Western Riverside MSHCP incorporates conservation actions within the planning area, such as implementing a nonnative species removal program, maintaining or improving water quality standards, and removing or modifying barriers to fish passage within the Santa Ana River to address the long-term conservation of the Santa Ana sucker. Although the Western Riverside MSHCP is not yet approved by the Service, significant progress has been achieved in the development of this HCP, including the preparation of the EIS/EIR, the solicitation of public review and comment, and the initiation of a consultation with us on the issuance of incidental take permits for those species identified for coverage in the draft plan.

Santa Ana Sucker Conservation Program and Associated Maintenance and Operation Activities of Existing Water Facilities on the Santa Ana River

The Santa Ana Sucker (SAS) Conservation Program is a multi-agency partnership of Federal, and local government agencies and the private sector that encourages a river-wide approach to conservation of the Santa Ana sucker within the Santa Ana River and its tributaries. This partnership also increases the knowledge base to implement recovery strategies for the sucker in the Santa Ana River; ensures that each participating agency minimizes, to the extent possible, effects from routine activities to the sucker; and develops restoration techniques for degraded habitat. Partners in the SAS Conservation Program include the Santa Ana Watershed Project Authority, the Army Corps of Engineers (Corps), the Fish and Wildlife Service, and the following participating agencies: Orange County Water District, Orange County Resources and Development Department, Riverside County Flood Control and Water Conservation District, Riverside County Transportation Department, City of Riverside Regional Water Quality Control Plant, San Bernardino County Flood Control District, and the City of San Bernardino Municipal Water Department Rapid Infiltration and Extraction Facility.

The partnership was initially formed in the spring of 1999, when an informal group of concerned local, regional, State, and Federal agencies formed the Ad-Hoc Santa Ana Sucker Discussion Team (Discussion Team) to assist in reconciling economic activities with the conservation of the sucker and to identify and implement conservation measures that would contribute to the survival and recovery of the sucker, primarily within the Santa Ana River watershed. Research priorities and funding sources were identified, and a three-phase, coordinated effort was

initiated and completed during 1999 and 2000. These initial scientific studies concentrated on physiochemical variables, migration patterns, predatory fish relationships, and tributary analysis. As an outgrowth of these studies, the Discussion Team proposed the SAS Conservation Program, for an initial term of 5 years.

The purpose of the draft Programmatic Consultation on the SAS Conservation Program is to promote the conservation (*i.e.*, survival and recovery) of the sucker, while providing the necessary authorization, pursuant to the ESA, to allow for the incidental take of a limited number of suckers that is anticipated to occur when the participating agencies implement their covered activities. Covered activities include operation, maintenance, repair, and reconstruction of (*e.g.*, rebuilding existing levees for water conservation, constructed wetlands, and flood control) existing projects and facilities and the continuation of existing programs for flood control, water conservation, water treatment and discharge, protection of transportation routes, and wildlife conservation. Impact minimization measures for the Santa Ana sucker are integral to the SAS Conservation Program and are identified for each of the agencies' covered activities.

The SAS Conservation Program has funded research efforts to define habitat affinities for various life history stages of the sucker, investigate reproductive patterns of the sucker, develop a population trend database, examine aspects of sucker migration in the Santa Ana River, and examine effects on the sucker of temporary shutdowns of tertiary-treated wastewater discharge water to the Santa Ana River. Planned research projects of the SAS Conservation Program in 2004 include the development of habitat restoration methods, characterize the movement and diet of various life history stages of suckers, and investigate the effects of non-native adult fish on larval and juvenile suckers. Again, funding for all of these research efforts will be provided by the participating agencies.

We are excluding from critical habitat designation areas along the Santa Ana River because they are either within the planning area boundary for the draft Western Riverside MSHCP or the SAS Conservation Program. Our justification for excluding these areas is outlined below.

(1) Benefits of Inclusion

The benefits of designating critical habitat on lands within the boundaries of HCPs that cover the species for which critical habitat is being designated are small. HCPs generally include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. The draft Western Riverside MSHCP seeks to accomplish these goals for the Santa Ana sucker through the implementation of specific conservation measures. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. Under section 7, proposed actions that would adversely modify or destroy designated critical habitat cannot go forward, unless they are altered to eliminate the adverse modification or destruction of critical habitat.

An important objective of the Western Riverside MSHCP is to implement measures, including monitoring and management, necessary to conserve important habitat for the Santa Ana sucker within the plan's boundaries. Thus, the purposes of the Western Riverside MSHCP are consistent with the purpose served by undergoing consultation under section 7 which is to ensure that critical habitat of the sucker is not adversely modified by a proposed Federal action. Because issuance of an incidental take permit (ITP) under section 10 is a Federal action, prior to approving the Western Riverside MSHCP we must complete an internal section 7 consultation for every species, including the Santa Ana sucker, proposed to be covered under the proposed plan and permit. The consultation will require us to analyze the impacts of the proposed ITP and HCP on the Santa Ana sucker and its essential habitat within the plan boundaries, whether or not that habitat has been officially designated as critical habitat. Therefore, including that portion of the Santa Ana River basin that is within the boundaries of the proposed Western Riverside MSHCP as critical habitat would provide little benefit to the Santa Ana sucker because the potential impacts to the species' essential habitat within the MSHCP area are already addressed under the plan and will be analyzed in our internal section 7 consultation on the proposed ITP.

The SAS Conservation Program includes measures to restore, monitor, and enhance habitat for the Santa Ana sucker in the Santa Ana River. Similar to the Western Riverside MSHCP, the SAS Conservation Program is specifically designed to benefit the sucker and its essential habitat within the Santa Ana River. The SAS Conservation Program is a comprehensive conservation program for the sucker that includes measures to minimize the impacts of routine water management activities on the sucker and restore degraded river habitat to improve the species' prospects for survival and recovery. Because the SAS Conservation Program is specifically designed to benefit the sucker and its essential habitat within the Santa Ana River habitat and the Programmatic Consultation on the SAS Conservation Program will analyze the effects of the SAS Conservation Program on the sucker and its habitat, the designation of critical habitat within the boundaries of the SAS Conservation Program would provide little or no additional benefits to this species.

(2) Benefits of Exclusion

Excluding from critical habitat lands within the Western Riverside MSHCP or within the area covered by the SAS Conservation Program will provide several benefits. Exclusion of the lands from the final designation will allow us to continue working with the participants in a spirit of cooperation and partnership. In the past, HCP applicants and participants in voluntary conservation programs have generally viewed the designation of critical habitat as having a potential negative regulatory effect that discourages voluntary, cooperative and proactive efforts to conserve listed species and their habitats by non-Federal parties. They generally view designation of critical habitat as an indication by the Federal government that their proactive actions to protect the species and its habitat are inadequate. Excluding these areas from the perceived negative consequences of critical habitat, will likely encourage other jurisdictions, private landowners, and other entities to work cooperatively with us to develop HCPs and conservation plans, which will provide the basis for future opportunities to conserve species and their essential habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the nearly finished draft Western Riverside MSHCP and SAS Conservation Program and find that the benefits of exclusion outweigh the benefits of designating the areas covered by the MSHCP and SAS Conservation Program as critical habitat.

The exclusion of these areas from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and agencies in the development of the draft Western Riverside MSHCP and SAS

Conservation Program. The only potential benefit of designating critical habitat within these areas would be educational: informing the public of areas that are essential for the long-term survival and conservation of the species. However, this information has already largely been provided to the public through the material provided on our Web site and through the ample opportunity for public participation provided throughout the development of the Western Riverside MSHCP. The Corps of Engineers is also likely to issue a public notice and solicit public comment on the issuance of a permit for activities related to the maintenance and operation of existing water facilities on the Santa Ana River in association with the SAS Conservation Program further increasing the public's knowledge of the importance of the Santa Ana River to the sucker. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft Western Riverside MSHCP and SAS Conservation Program. Exclusion of these areas will not result in the extinction of the species because the Western Riverside MSHCP and SAS Conservation Program are designed to ensure that activities authorized within these areas include measures to protect the Santa Ana Sucker and its habitat.

Based on our evaluation of our past consultation history on the Santa Ana Sucker and the analysis conducted for those consultations, the Western Riverside MSHCP, and the SAS Conservation Program, we believe that we have a general understanding of potential impacts, including those related to economics, of this designation. We have considered these potential impacts in the development of this designation and do not believe, at this time, that additional exclusion, including those based on economics, pursuant to section 4(b)(2) of the Act are warranted.

Santa Clara River

We listed as threatened only those Santa Ana sucker populations thought to occur within the native range of the species. The native range of the Santa Ana sucker is considered to be the streams of the Los Angeles, San Gabriel, and Santa Ana River basins. The Santa Clara River population is presumed to be an introduced population, although this presumption is based entirely on negative data, and not on a documented record of introduction (Hubbs *et al.* 1943, Miller 1968, Moyle 1976, Bell 1978). The Santa Clara population was not listed; thus critical habitat cannot be designated for this population. As we stated in the final listing rule, we will further evaluate the role of the Santa Clara River population in the recovery of the species. If the Santa Clara River population is determined to be crucial to the recovery of the species, we may re-evaluate the status of this population, threats to its conservation, and the status of the population under the Act.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and

the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Santa Ana sucker and designated critical habitat will require consultation under section 7. On private, State, or county lands, or lands under local jurisdictions, activities requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency may affect or destroy or adversely modify critical habitat for Santa Ana sucker include, but are not limited to:

(1) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or licensed by the Environmental Protection Agency (EPA), that could alter the watershed, water quality, and natural hydrologic function to an extent that water quality and/or water quantity becomes unsuitable to support the Santa Ana sucker within designated critical habitat;

(2) Roads, highways, and rights-of-way construction and maintenance or any activity funded or carried out by the Department of Transportation or other Federal agencies that results in discharge of dredged or fill material or excavation within designated critical habitat; or

(3) Activities regulated by the Corps, EPA, or Natural Resources Conservation Service under the Clean Water Act and other acts or regulations, including but not limited to, discharge of fill into waters of the United States and promulgation of water quality standards within designated critical habitat;

(4) Sale or exchange of Federal lands by a Federal agency to a non-Federal entity within designated critical habitat;

(5) Construction, licensing, re-licensing, and operation of dams or other water impoundments by the Bureau of Reclamation (BOR), Corps, or Federal Energy Regulatory Commission (FERC) within designated critical habitat;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of construction or development activities by the U.S. Department of Housing and Urban Development; and

(8) Promulgation and implementation of a land use plan by a Federal agency such as the U.S. Forest Service that may alter management practices for critical habitat.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has not reviewed this final critical habitat designation in accordance with Executive Order 12866. In order to comply with the critical habitat designation deadline established by the district court, there was insufficient time for OMB to formally review this proposal.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Service is not required to comply with the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) when promulgating a final rule under the good cause exemption of the Administrative Procedure Act (APA). RFA section 3 requires the preparation of an initial regulatory flexibility analysis (IRFA) "whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule * * *" (5 U.S.C. 603(a)). RFA section 4 requires agencies to conduct a final regulatory flexibility analysis (FRFA) with each final rule, but only when "an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking * * *" (5 U.S.C. 604(a)). Therefore, for a critical habitat final rulemaking conducted under the APA's 553(b)(B) good cause exemption, the RFA does not require the Service to create an IFRA or a FRFA and contains no other provisions requiring compliance in such situations. The certification procedures in RFA section 5 are not relevant because they are only triggered if an IRFA or FRFA is otherwise required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. As previously discussed, we have excluded critical habitat from private lands within the draft Western Riverside MSHCP and the SAS Conservation Program under section 4(b)(2) of the Act. The exclusion of these private lands and the activities associated with the draft Western Riverside MSHCP and SAS Conservation Program eliminates the potential for critical habitat in these excluded areas to have any effect on the increase in cost or prices for consumers or any significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Moreover, approximately 48 percent of the designated critical habitat is on Forest Service lands that are not intensively used for commercial or business purposes and we anticipate that the designation will have little to no effect on cost or prices for consumers or any other significant commercial or business related activities. The remaining 52 percent of designated critical habitat that occurs on private lands is constrained by other existing conditions, such as being within wetlands regulated by the U.S. Army Corps of Engineers, floodplains identified by FEMA, or by the presence of listed species or other designated critical habitat. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based

enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866, and is not expected to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, we do not believe the designation of critical habitat for the Santa Ana sucker will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not "significantly or uniquely" affect small governments so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Santa Ana sucker in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat for the Santa Ana sucker does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have federalism implications or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A federalism assessment is not required.

The designations may have some benefit to the State of California and local government, in that the areas essential to the conservation of the Santa Ana sucker are more clearly defined, and the primary constituent elements of the habitat necessary to their survival are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than causing them to wait for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Santa Ana sucker.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951, E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. Amend § 17.11(h), by revising the entry for "Sucker, Santa Ana" under "FISHES" to read as follows:

17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sucker, Santa Ana	(*Catostomus santaanae*).	U.S.A. (CA)	Los Angeles River basin, San Gabriel River basin, Santa Ana River basin.	T	694	17.95(e)	N/A
*	*	*	*	*	*	*	

■ 3. Amend § 17.95(e) by adding critical habitat for the Santa Ana sucker (*Catostomus santaanae*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes. * * *

Santa Ana Sucker (*Catostomus santaanae*)

(1) Critical habitat units are depicted for Los Angeles and San Bernardino Counties, California, on the maps and as described below.

(2) Primary constituent elements essential for the conservation of the Santa Ana sucker are found in an ecosystem that includes a functioning hydrological system that experiences peaks and ebbs in water volume and maintains a sand, gravel, and cobble substrate in a mosaic of sandy stream margins, deep water pools, riffles (*i.e.*, well-oxygenated, shallow water over rough substrate), and runs (*i.e.*, shallow water over generally smooth substrate); sufficient water volume and quality; and complex, native floral and faunal associations. The primary constituent elements for the sucker are the following:

(i) A functioning hydrological system that experiences peaks and ebbs in the water volume throughout the year;

(ii) A mosaic of sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools and shallow sandy stream margins;

(iii) Water depths greater than 3 cm and bottom water velocities greater than 0.03 meter per second;

(iv) Non-turbid conditions or only seasonally turbid conditions;

(v) Water temperatures less than 30 °C; and

(vi) Stream habitat that includes algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation.

(3) The textual unit descriptions below are the definitive source for determining critical habitat boundaries. General location maps by unit are provided at the end of each unit description and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(4) *Unit 1:* Santa Ana River system in San Bernardino County, California

(i) Unit 1 includes two subunits: Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash. Unit 1A, Northern Prado Basin includes Chino Creek and Cucamonga Creek. Unit 1B, Santa Ana Wash includes portions of the mainstem of the Santa Ana River from La Cadena Avenue Bridge to the downstream edge of Seven Oaks Dam and the tributaries of City Creek and Mill Creek. The lateral extent of Unit 1 is defined by the UTM coordinates described in the legal description.

Unit 1: Santa Ana River, San Bernardino County, California.

Unit 1A: Northern Prado Basin. From USGS 1:24,000 quadrangle maps Corona North and Prado Dam, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 436200, 3759600; 436300, 3759600; 436300, 3759500; 436400, 3759500; 436400, 3759400; 436500, 3759400; 436500, 3759300; 436600, 3759300; 436600, 3759200; 436700, 3759200; 436700, 3759100; 436800, 3759100; 436800, 3759000; 436900, 3759000; 436900, 3758800; 437000, 3758800; 437000, 3758700; 437100, 3758700; 437100, 3758600; 437200, 3758600; 437200, 3758400; 437300, 3758400; 437300, 3758300; 437600, 3758300; 437600, 3758200; 437700, 3758200; 437700, 3758000; 437800, 3758000; 437800, 3757900; 437900, 3757900; 437900, 3757700; 438400, 3757700; 438400, 3757500; 438300, 3757500; 438300, 3757400; 438200, 3757400; 438200, 3757300; 438300, 3757300; 438300, 3757200; 438200, 3757200; 438200, 3757000; 438300, 3757000; 438300, 3756900; 438400, 3756900; 438400, 3756800; 438500, 3756800; 438500, 3756700; 438600, 3756700; 438600, 3756600; 438700, 3756600; 438700, 3756500; 438600, 3756500; 438600, 3756400; 438700, 3756400; 438700, 3756300; 439000, 3756300; 439000, 3756200; 439100, 3756200; 439100, 3756100; 439200, 3756100; 439200, 3756200; 439600, 3756200; 439600, 3755800; 439700, 3755800; 439700, 3756100; 439800, 3756100; 439800, 3756200; 440000, 3756200; 440000, 3756400; 440100, 3756400; 440100, 3756500; 440300, 3756500; 440300, 3756400; 440200, 3756400; 440200, 3756200; 440300, 3756200; 440300, 3755900; 440400, 3755900; 440400, 3756100; 440600, 3756100; 440600, 3756000; 440700, 3756000; 440700, 3755900; 440800, 3755900; 440800, 3755600; 440700, 3755600; 440700, 3755500; 440800, 3755500; 440800, 3755400; 441000, 3755400; 441000, 3755500; 441500, 3755500; 441500, 3755800; 442500, 3755800; 442500, 3755900; 442700, 3755900; 442700, 3756200; 442900, 3756200; 442900, 3756300; 443000, 3756300; 443000, 3756400; 443500, 3756400; 443500, 3756500; thence east to the San Bernardino/Riverside County boundary at y-coordinate 3756500; thence south along the San Bernardino/Riverside County boundary to y-coordinate 3756200; thence west following coordinates: 443500, 3756200; 443500, 3756100; 443300, 3756100; 443300, 3756000; 443200, 3756000; 443200, 3755800; 443100, 3755800; 443100, 3755700; 443000, 3755700; 443000, 3755600; 442900, 3755600; 442900, 3755500;

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Unit 1B: Santa Ana Wash. From USGS 1:24,000 quadrangle maps Forest Falls, Harrison Mountain, Redlands, San Bernardino South, and Yucaipa, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 482700, 3783600; 482700, 3783500; 482900, 3783500; 482900, 3783400; 483100, 3783400; 483100, 3783300; 483300, 3783300; 483300, 3783200; 483400, 3783200; 483400, 3782700; 483100, 3782700; 483100, 3782600; 483200, 3782600; 483200, 3782500; 483100, 3782500; 483100, 3782100; 483200, 3782100; 483200, 3782000; 483600, 3782000; 483600, 3781800; 483400, 3781800; 483400, 3781200; 483500, 3781200; 483500, 3781000; 483600, 3781000; 483600, 3780900; 483500, 3780900; 483500, 3780600; 483400, 3780600; 483400, 3780500; 483500, 3780500; 483500, 3780200; 483400, 3780200; 483400, 3780000; 483300, 3780000; 483300, 3779800; 483400, 3779800; 483400, 3779600; 483300, 3779600; 483300, 3779000; 483100, 3779000; 483100, 3778900; 483000, 3778900; 483000, 3778700; 482900, 3778700; 482900, 3778000; 482800, 3778000; 482800, 3777800; 482900, 3777800; 482900, 3777600; 482800, 3777600; 482800, 3777400; 482700, 3777400; 482700, 3777000; 482600, 3777000; 482600, 3776500; 482700, 3776500; 482700, 3775500; 482600, 3775500; 482600, 3775300; 482500, 3775300; 482500, 3774800; 482600, 3774800; 482600, 3774600; 482700, 3774600; 482700, 3774500; 482800, 3774500; 482800, 3774300; 482900, 3774300; 482900, 3774200; 483000, 3774200; 483000, 3774100; 483100, 3774100; 483100, 3773900; 483200, 3773900; 483200, 3773800; 484700, 3773800; 484700, 3774200; 486300, 3774200; 486300, 3774300; 486600, 3774300; 486600, 3774400; 486800, 3774400; 486800, 3774500; 487100, 3774500; 487100, 3774600; 487200, 3774600; 487200, 3774400; 487100, 3774400; 487100, 3774000; 487200, 3774000; 487200, 3773900; 487300, 3773900; 487300, 3772700; 488100, 3772700; 488100, 3772600; 488200, 3772600; 488200, 3772700; 488500, 3772700; 488500, 3772500; 489000. 3772500; 489000, 3772700; 489100, 3772700; 489100, 3772800; 489200, 3772800; 489200, 3773000; 489400, 3773000; 489400, 3773100; 489800, 3773100; 489800, 3773200; 490400, 3773200; 490400, 3773000; 490300, 3773000; 490300, 3772800; 490200, 3772800; 490200, 3772700; 490100, 3772700; 490100, 3772500; 490000, 3772500; 490000, 3772300; 489900, 3772300; 489900, 3772200; 489800, 3772200; 489800, 3772000; 489700, 3772000; 489700, 3771600; 489800, 3771600; 489800, 3771500; 489900, 3771500; 489900, 3771400; 490000, 3771400; 490000, 3771300; 490200, 3771300; 490200, 3771200; 490300, 3771200; 490300, 3771100; 490500, 3771100; 490500, 3771000; 490700, 3771000; 490700, 3770900; 490900, 3770900; 490900, 3770800; 491000, 3770800; 491000, 3770700; 491100, 3770700; 491100, 3770600; 493200, 3770600; 493200, 3770700; 493400, 3770700; 493400, 3770800; 493500, 3770800; 493500, 3770900; 493800, 3770900; 493800, 3771000; 494200, 3771000; 494200, 3771100; 494500, 3771100; 494500, 3771200; 494600, 3771200; 494600, 3771300; 494700, 3771300; 494700, 3771400; 494900, 3771400; 494900, 3771500; 495000, 3771500; 495000, 3771600; 495200, 3771600; 495200, 3771700; 495500, 3771700; 495500, 3771800; 495800, 3771800; 495800, 3771900; 496200, 3771900; 496200, 3772000; 496400, 3772000; 496400, 3772100; 496700, 3772100; 496700, 3772200; 496800, 3772200; 496800, 3772300; 496900, 3772300; 496900, 3772500; 497000, 3772500; 497000, 3772600; 497100, 3772600; 497100, 3772700; 497400, 3772700; 497400, 3772800; 497500, 3772800; 497500, 3773000; 497600, 3773000; 497600, 3773100; 497700, 3773100; 497700, 3773200; 497900, 3773200; 497900, 3773300; 498200, 3773300; 498200, 3773400; 498400, 3773400; 498400, 3773500; 498700, 3773500; 498700, 3773600; 498800, 3773600; 498800, 3773500; 499300, 3773500; 499300, 3773300; 499500, 3773300; 499500, 3773200; 499900, 3773200; 499900, 3773100; 500200, 3773100; 500200, 3773000; 501000, 3773000; 501000, 3773100; 501200, 3773100; 501200, 3773000; 501600, 3773000; 501600, 3772900; 502400, 3772900; 502400, 3772800; 503100, 3772800; 503100, 3772700; 503700, 3772700; 503700, 3772600; 504100, 3772600; 504100, 3772700; 504600, 3772700; 504600, 3772600; 505100, 3772600; 505100, 3772500; 505400, 3772500; 505400, 3772400; 505500, 3772400; 505500, 3772300; 505700, 3772300; 505700, 3772200; 505800, 3772200; 505800, 3772100; 505900, 3772100; 505900, 3771900; 505500, 3771900; 505500, 3772000; 505300, 3772000; 505300, 3772100; 505100, 3772100; 505100, 3772200; 504800, 3772200; 504800, 3772300; 504000, 3772300; 504000, 3772400; 503800, 3772400; 503800, 3772300; 503700, 3772300; 503700, 3772400; 503500, 3772400; 503500,

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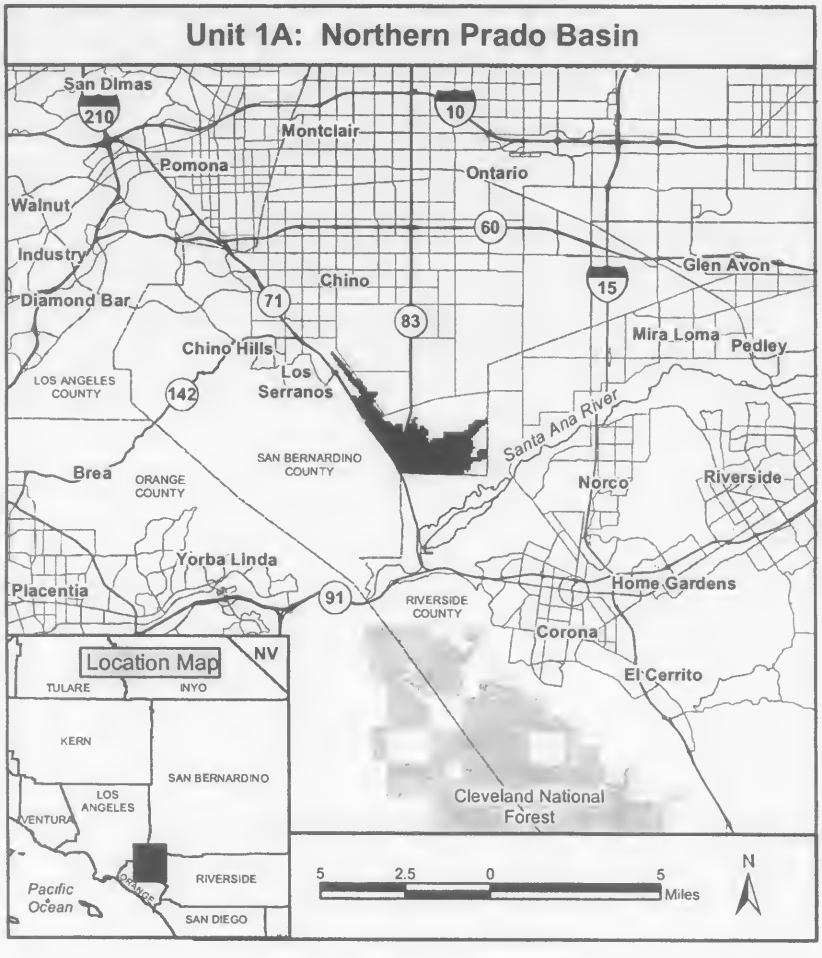
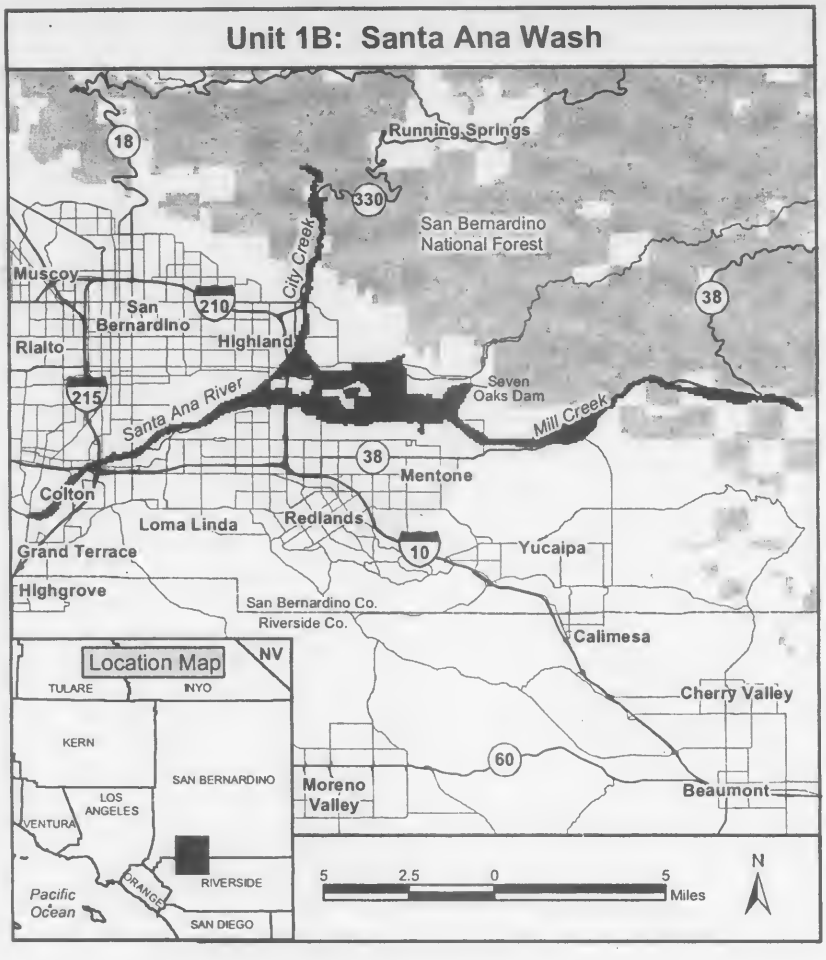
(ii) Maps of Unit 1 follow:





BILLING CODE 4310–55–C

(5) *Unit 2:* San Gabriel River system in Los Angeles County, California.

(i) Unit 2 includes the West, North and East Forks of the San Gabriel River and the following tributaries from source to confluence: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek. The San Gabriel River portion of the unit extends from the Cogswell Dam on the West Fork to the Bridge-of-No Return on the East Fork, and portions of the North Fork. The lateral extent of Unit 2 is defined by the UTM coordinates described in the legal description.

Unit 2: San Gabriel River. Los Angeles County, California. From USGS 1:24,000 quadrangle maps Azusa, Crystal Lake, Glendora, Mount Baldy, Mount San Antonio, and Waterman Mountain, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 422700, 3795100; 423300, 3795100; 423300, 3795000; 423400, 3795000; 423400, 3794400; 423300, 3794400; 423300, 3794300; 423200, 3794300; 423200, 3794200; 423100, 3794200; 423100, 3794000; 423000, 3794000; 423000, 3793400; 422900, 3793400; 422900, 3793300; 422800, 3793300; 422800, 3793200; 422700, 3793200; 422700, 3793100; 422600, 3793100; 422600, 3792900; 422500, 3792900; 422500, 3792800; 422400, 3792800; 422400, 3792100; 422500, 3792100; 422500, 3791800; 422700, 3791800; 422700, 3791900; 422900, 3791900; 422900, 3792000; 423100, 3792000; 423100, 3792100; 423800, 3792100; 423800, 3792200; 424500, 3792200; 424500, 3791900; 424300, 3791900; 424300, 3791800; 424000, 3791800; 424000, 3791700; 423900, 3791700; 423900, 3791600; 423400, 3791600; 423400, 3791700; 423200, 3791700; 423200, 3791600; 423000, 3791600; 423000, 3791500; 422900, 3791500; 422900, 3791400; 422700, 3791400; 422700, 3791300; 422600, 3791300; 422600, 3791200; 422500, 3791200; 422500, 3791100; 422400, 3791100; 422400, 3791000; 421700, 3791000; 421700, 3790900; 421600, 3790900; 421600, 3790800; 421500, 3790800; 421500, 3790700; 421400, 3790700; 421400, 3790600; 421300, 3790600; 421300, 3790200; 421200, 3790200; 421200, 3790100; 421100, 3790100; 421100, 3789900; 420800, 3789900; 420800, 3789800; 420700, 3789800; 420700, 3789700; 420600, 3789700; 420600, 3789600; 420500, 3789600; 420500, 3789500; 420700, 3789500; 420700, 3789400; 420800, 3789400; 420800, 3789000; 420900, 3789000; 420900, 3789100; 421100, 3789100; 421100, 3789200; 421200, 3789200; 421200, 3789300; 421700, 3789300; 421700, 3789200; 421800, 3789200; 421800, 3789100; 421900, 3789100; 421900, 3788900; 422000, 3788900; 422000, 3788800; 422200, 3788800; 422200, 3788700; 422400, 3788700; 422400, 3788500; 422500, 3788500; 422500, 3788600; 422600, 3788600; 422600, 3788700; 422500, 3788700; 422500, 3789400; 422600,

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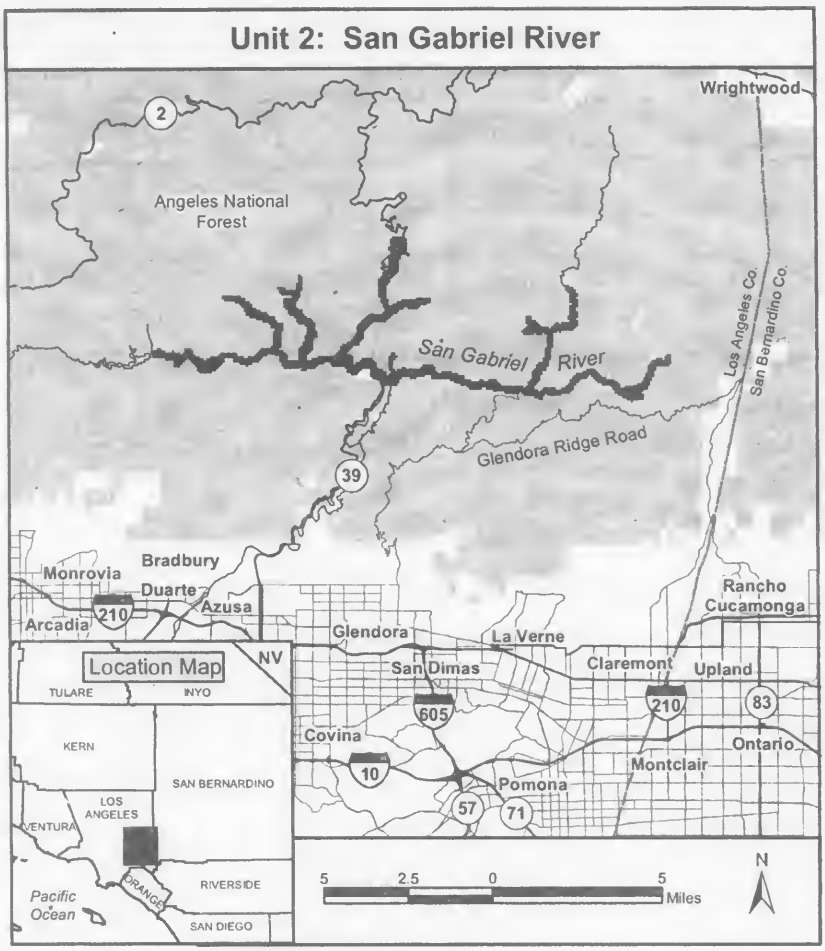
(ii) The map of Unit 2 follows:



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(6) *Unit 3:* Big Tujunga Creek system in Los Angeles County, California

(i) Unit 3 includes the stretch of Big Tujunga Creek between the Big Tujunga Dam and Hansen Dam and the following tributaries: Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek. The lateral extent of Unit 3 is defined by the UTM coordinates described in the legal description.

Unit 3: Big Tujunga Creek. Los Angeles County, California. From USGS 1:24,000 quagrangle maps Condor Peak, San Fernando, and Sunland, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 381800, 3797700; 382100, 3797700; 382100, 3797600; 382300, 3797600; 382300, 3797500; 382400, 3797500; 382400, 3797400; 382700, 3797400; 382700, 3797300; 382800, 3797300; 382800, 3797200; 383000, 3797200; 383000, 3797100; 383100, 3797100; 383100, 3797000; 383300, 3797000; 383300, 3796500; 383400, 3796500; 383400, 3796300; 383300, 3796300; 383300, 3796200; 383200, 3796200; 383200, 3796100; 383600, 3796100; 383600, 3796300; 383700, 3796300; 383700, 3796500; 384300, 3796500; 384300, 3796400; 384400, 3796400; 384400, 3796300; 384600, 3796300; 384600, 3796200; 384900, 3796200; 384900, 3796100; 385000, 3796100; 385000, 3796000; 385100, 3796000; 385100, 3795900; 385200, 3795900; 385200, 3795800; 385300, 3795800; 385300, 3795700; 385900, 3795700; 385900, 3795600; 386100, 3795600; 386100, 3795500; 386200, 3795500; 386200, 3795400; 386300, 3795400; 386300, 3795300; 386500, 3795300; 386500, 3795200; 386600, 3795200; 386600, 3795100; 386700, 3795100; 386700, 3794900; 386800, 3794900; 386800, 3794800; 386900, 3794800; 386900, 3794700; 387000, 3794700; 387000, 3794600; 387100, 3794600; 387100, 3794500; 387200, 3794500; 387200, 3794400; 387600, 3794400; 387600, 3794300; 387700, 3794300; 387700, 3794200; 387800, 3794200; 387800, 3793800; 387900, 3793800; 387900, 3793900; 388000, 3793900; 388000, 3793800; 388100, 3793800; 388100, 3793600; 388600, 3793600; 388600, 3793700; 388800, 3793700; 388800, 3793800; 389100, 3793800; 389100, 3793700; 389300, 3793700; 389300, 3793800; 389400, 3793800; 389400, 3793900; 389600, 3793900; 389600, 3794000; 389700, 3794000; 389700, 3794100; 389800, 3794100; 389800, 3794200; 389900, 3794200; 389900, 3794300; 390000, 3794300; 390000, 3794700; 390100, 3794700; 390100, 3794900; 390200, 3794900; 390200, 3795000; 390400, 3795000; 390400,

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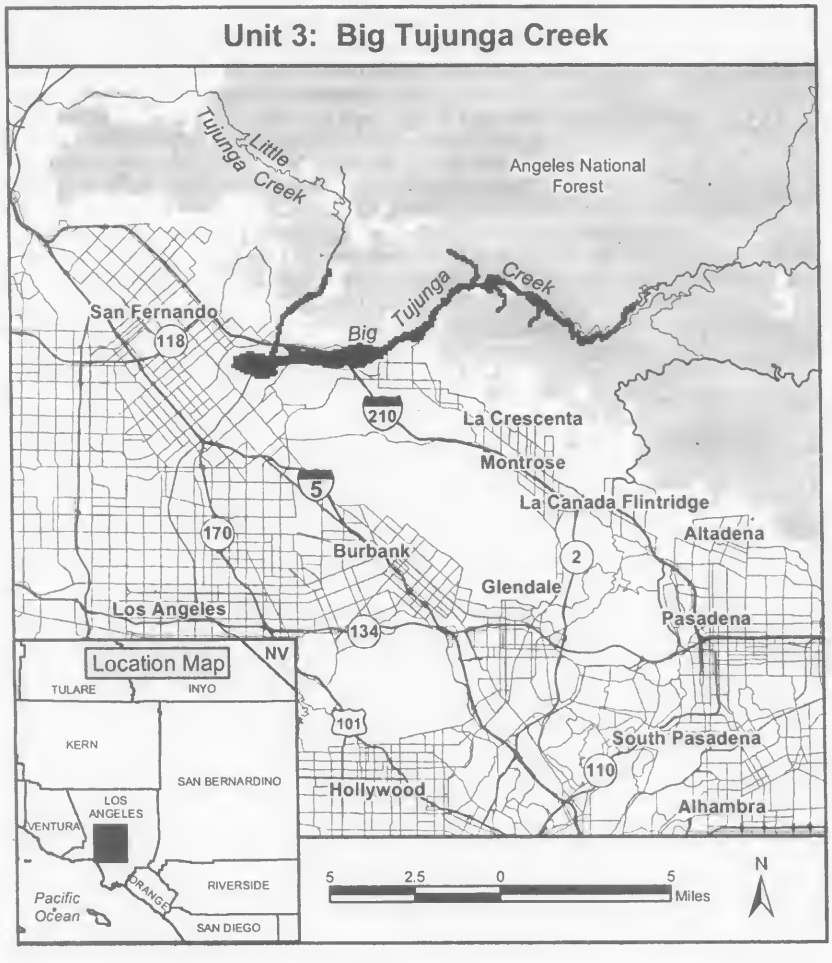
(ii) The map of Unit 3 follows:

BILLING CODE 4310–55–P



(7) Lands located within the exterior boundaries of the critical habitat designation that are not considered critical habitat and are therefore excluded by definition include: existing paved roads; bridges; parking lots; railroad tracks; railroad trestles; and residential, commercial, and industrial developments.

* * * * *

Dated: February 20, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–4225 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030821210–4052–02; I.D.081103A]

RIN 0648–AR36

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–1

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–1 sets a process for and standards by which the Council will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16–1 is intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), in particular national standard 1 on overfishing which addresses rebuilding overfished

fisheries. Amendment 16–1 is also intended to partially respond to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

DATES: Effective March 29, 2004.

ADDRESSES: Copies of Amendment 16–1 and the environmental assessment/initial regulatory impact review (EA/RIR/IRFA)) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of the final regulatory flexibility analysis (FRFA) are available from D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 and; e-mail: yvonne.dereynier@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www/gpoaccess/gpv/fr/index.html.* Background information and documents are available at the NMFS Northwest Region website at *http://www/nwr.noaa.gov/1sustfsh/gdfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org.*

Background

A Notice of Availability for Amendment 16–1 to the FMP was published on August 18, 2003 (68 FR 49415). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60–day comment period, ending October 17, 2003. A proposed rule to implement Amendment 16–1 was published on September 5, 2003 (68 FR 52732). NMFS requested comment on the proposed rule through October 6, 2003. During the comment periods on the amendment and proposed rule, NMFS received four letters of comment, which are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background on the fishery and on this rule. Further detail on Amendment 16–1 also appears in the EA/RIR/IRFA prepared by the Pacific Fishery Management Council (Council) for this action.

NMFS approved Amendment 16–1 on November 14, 2003. Amendment 16–1 requires that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and then implemented through Federal regulations. For each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}, the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied (T_{MAX}), the estimated probability that the stock would be rebuilt by this date under the adopted rebuilding plan based on the application of stock rebuilding measures, the year in which the stock would be rebuilt under the adopted rebuilding plan based on the application of stock rebuilding measures (T_{TARGET}), and a harvest control rule. These estimated values will serve as management benchmarks in the FMP. The FMP will not be amended if, as is likely to happen, the values for these parameters change as a result of new stock assessments. Other relevant information listed in Amendment 16–1 will also be included in the FMP.

The two rebuilding parameters that control the establishment of the annual or biennial optimum yield (OY) of each overfished species will be codified in the Code of Federal Regulations (CFR): the target year for rebuilding and the harvest control rule to be used to rebuild the stock. If, after a new stock assessment, the Council and NMFS conclude that these should be revised, the revision will be done through a rulemaking, and the updated values codified in the CFR.

In addition to specifying how rebuilding plans and their parameters will be handled in the FMP and in Federal regulations, Amendment 16–1 will: set schedules and standards for reviewing rebuilding plans; specify that the rebuilding plan for each species will set a species-specific standard for determining the adequacy of rebuilding progress for the particular species toward that goal; give Endangered Species Act (ESA) jeopardy standards and/or recovery plans precedence over rebuilding plans if they establish higher recovery standards than those already set in the rebuilding plans, and; make minor housekeeping amendments to the FMP text, such as correcting mis-spelled species names, revising definitions to better comport with the national standard guidelines, revising the Stock Assessment and Fishery Evaluation report schedule, clarifying that the Federal observer program is mandatory, and reorganizing outdated sections of the FMP.

Comments and Responses

NMFS received four letters of comment on the proposed rule to implement Amendment 16–1: two letters were received from environmental advocacy organizations, one letter was received from the U.S. Department of the Interior, and one letter was received from the U.S. Coast Guard. Their comments are addressed here:

Comment 1: We recommend that the FMP specify for each overfished species a virgin biomass (B_0 or $B_{UNFISHED}$)that is the product of that stock's spawning potential ratio in an unfished state and the average recruitment during the early years of the fishery, or the standard used by NMFS for stock assessments. We also recommend that this value be specified in Federal regulations.

Response: According to the Council's Scientific and Statistical Committee's (SSC's) Terms of Reference for Groundfish Rebuilding Analyses (April 2001), analysts typically estimate B_0 values by reviewing recruitment from a sequence of years in which recruitment is believed to be reasonably representative of that of an unfished stock. This practice typically translates into a reliance on stock size estimates from the earliest years for which recruitment information is available. Incorporating new data on stock size and recruitment levels into a stock assessment would likely result in the revision of B_0 for that species. For example, the June 2002 canary rockfish rebuilding analysis completed for Amendment 16–2 revised an earlier estimate of B_0 by incorporating older historical information (back to 1940) on canary rockfish recruitment. Both the canary rockfish and darkblotched rockfish B_0 values provided in Amendment 16–2 were calculated in the manner suggested by the commenter.

For Pacific ocean perch (POP), assessment authors reviewed this traditional approach and modified it somewhat because POP recruitment is highly variable and recruitment levels in the earlier years of the POP assessment period were unusually high. Assessment authors found that recruitment values earlier than and later than the assessment period were substantially smaller than the values for the years at the start of the assessment period. For lingcod, which tends to have more constant recruitment rates than rockfish species, stock assessment authors looked at recruitment rates for

the entire time series available for lingcod (1973–1995).

In raising this issue, the commenter addresses a basic conundrum in fish stock assessment. West Coast fisheries and atmospheric scientists acknowledge that West Coast waters experience periodic warming and cooling cycles that seem to affect recruitment success for some West Coast species. If the earliest data available on a particular stock were from years when ocean conditions for that stock's recruitment levels were good, an assessment author could use those data and overestimate the long-term average size of B_0. In this circumstance the earlier B_0 could not be maintained by the stock under the subsequent poorer ocean conditions, even in the absence of fishing. Conversely, if the ocean conditions were not favorable to recruitment during the early years of a particular stock's assessment period, an assessment author could use those data and underestimate the size of B_0. These possibilities are particularly evident for rockfish, which seem to have highly variable rates of recruitment. Thus, while NMFS recognizes that the commenter's B_0 estimation method has merit and should be considered in the development of rebuilding analyses, the agency continues to support the SSC's recommendations that the determination of B0 be attuned to the behavior of and information about each particular stock being assessed.

For each overfished species, NMFS intends to include only the target year for rebuilding (T_{TARGET}) and the harvest control rule in Federal regulations because these parameters would control the establishment of OY for these species. Other rebuilding parameters such as B_0 will be included in the FMP.

Comment 2: The commenter recommended that the FMP specify for each overfished species a proxy for biomass at MSY (B_{MSY}) that is forty percent of $B_{UNFISHED}$. The commenter also recommended that this value be specified in Federal regulations.

Response: The FMP, as amended by Amendment 16–1, specifies in its definition of "MSY stock size" that the proxy for B_{MSY} "typically used in this fishery management plan is 40 percent of the estimated unfished biomass, although other values based on the best scientific information are also authorized." This proxy is again specified in the FMP at Section 4.4.1, which establishes a B_{MSY} precautionary threshold for stocks that have received quantitative assessments. Species with stock sizes below their B_{MSY} are to be managed at more precautionary harvest levels. Section 4.4.1 reads in part, "The default precautionary threshold will be 40 percent of the estimated unfished biomass level. The Council may recommend different precautionary thresholds for any species or species group based on the best scientific information about that species or species group. It is expected that the threshold will be between 25 percent and 50 percent of the estimated unfished biomass level."

The B_{MSY} levels set for each of the four overfished species in Amendment 16–2 are set at B_{40}. As the FMP makes clear, B_{40} is the default B_{MSY} proxy for all stocks that have received quantitative assessments, including overfished species. However, the FMP is also clear in stating that B_{MSY} for a particular stock may be modified from B_{40} if the best available scientific information on that stock warrants the revision.

For each overfished species, NMFS intends to include only the target year for rebuilding (T_{TARGET}) and the harvest control rule in Federal regulations because these parameters would control the establishment of OY for these species. Other rebuilding parameters such as B_0 will be included in the FMP.

Comment 3: The commenter recommended that the FMP specify a target time for rebuilding (T_{TARGET}) that is the midpoint between the minimum time for rebuilding (T_{MIN}) and the maximum time for rebuilding (T_{MAX}). The commenter also recommended that this value be specified in Federal regulations.

Response: According to the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(*3*), if T_{MIN} is 10 years or greater, "then the specified time period for rebuilding [T_{TARGET}] may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics [T_{MAX}]."

The Council has not recommended for the 16–2 species a T_{TARGET} value that exceeds T_{MAX}. For some species, it would be appropriate to set a T_{TARGET} that is the midpoint between T_{MIN} and T_{MAX}. Amendment 16–2, for example, includes Council-preferred alternatives for darkblotched rockfish and POP T_{TARGET} levels that are set at the midpoints between their respective T_{MIN} and T_{MAX} levels. However, there are cases where the needs of fishing communities or recommendations of international organizations may result in the setting of a T_{TARGET} year that is different from the midpoint between the minimum time for rebuilding and the maximum time for rebuilding.

Many of the overfished groundfish stocks tend to be thoroughly mixed with other, more abundant stocks. Historically, NMFS and the Council have interpreted the needs of the fishing communities to primarily include the need to have some fishing occurring for those more abundant stocks. Some overfished species, such as canary rockfish, co-occur with more abundant fish stocks to such a great degree that setting a T_{TARGET} year at the midpoint between the minimum time for rebuilding and the maximum time for rebuilding would result in the closure of one or more fishing sectors, resulting in severe impacts on participants in these fisheries.

Canary rockfish rebuilding parameters in Amendment 16–2 provide an example of the effects of managing to different T_{TARGET} years in a multi-species fishery. The Council's preferred alternative is a canary rockfish T_{TARGET} of 2074, with a T_{MIN} of 2057 and a T_{MAX} of 2076. The Amendment 16–2 Draft Environmental Impact Statement (DEIS) analyzes canary rockfish rebuilding for a range of alternatives that include maximum conservation by managing to T_{MIN} and maximum harvest by managing to T_{MAX}. At T_{MIN}, no directed or incidental take of canary rockfish would be permitted (Table 2.0–1, 16–2 DEIS). Table 3.1–1 of the DEIS shows the known latitudinal and depth distributions of FMP groundfish, with canary rockfish listed as a coastwide stock with a depth distribution of 50–150 fm (91–274 m). To fully avoid canary rockfish, recreational fisheries for groundfish would have to close entirely because of their canary rockfish interceptions. A broad range of commercial fisheries ranging from groundfish trawl to halibut longline would similarly need to be closed in order to avoid canary rockfish altogether (Table 4.4–11, 16–2 DEIS). Even at the Council's preferred T_{TARGET} of 2074, management measures to protect canary rockfish in 2004 include: a Rockfish Conservation Area (RCA) in which groundfish bottom trawling is prohibited between the 75 fm (137 m) and 200 fm (366 m) depths, trawl footrope gear restrictions to make trawl gear less effective in canary rockfish habitat, an RCA in which fishing for groundfish with non-trawl gear is prohibited between the 30–fm (55–m) and 100–fm (183–m) depths, state-management requirements that shrimp and prawn trawlers carry finfish

excluder devices, and prohibiting canary rockfish retention in the recreational fisheries coastwide. In summary, due to socioeconomic considerations and the constraints on fishing communities associated with rebuilding measures for overfished species, the agency does not expect to set a single T_{TARGET} guideline for all species that would be the midpoint between T_{MIN} and T_{MAX}. While the Technical Guidance on the Use of the Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Technical Guidance) at page 38 suggests that T_{TARGET} be set no higher than the midpoint between T_{MIN} and T_{MAX}, adopting that as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act. It would not be consistent with the Magnuson-Stevens Act because it would not allow the criteria in the Act at section 304(e)(4) and the national standard guidelines at 600.310(e)(4)(ii) to be taken into account. The Technical Guidance is not a binding regulation that must be followed. The Technical Guidance itself acknowledges that it deals with biological issues, and not with socioeconomic issues, which fishery management councils must consider, per the Magnuson-Stevens Act (Technical Guidance at 1, 28).

NMFS intends to include a value for T_{TARGET} for each overfished species in Federal regulations at 50 CFR 660.370, as shown in the proposed rule to implement Amendment 16–2 (December 5, 2003, 68 FR 67998.)

Comment 4: We recommend that the FMP specify a T_{MAX} that is associated with a ninety percent probability ($P_{90\%}$) of rebuilding to B_{MSY} for those species with a stock assessment containing uncertainty and with an eighty percent probability ($P_{80\%}$) of rebuilding to B_{MSY} for those species with stock assessments containing no uncertainty. This rebuilding time would serve as an outer bound for rebuilding analyses.

Response: The definition for T_{MAX} was provided above in the response to Comment 3 and is repeated here, in part: "the specified time period for rebuilding [T_{TARGET}] may be adjusted upward . . . except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics [T_{MAX}]" (600.310(e)(4)(ii)(B)(3)). Thus, T_{MAX} is an outer boundary for the rebuilding time that is defined by a stock's recruitment in the absence of fishing and by the stock's mean generation time. The probability of rebuilding to B_{MSY} by T_{MAX} is a function of the fishing mortality rate, not the calculated T_{MAX}; the fishing mortality rate also determines T_{TARGET}. In order to ensure that it had illustrated the range of effects on the environment of different rebuilding probabilities for the Amendment 16–2 species, the Amendment 16–2 Environmental Impact Statement (EIS) includes a "maximum conservation" alternative, in which the fishing mortality rate is set to 0, T_{TARGET} is equal to T_{MIN}, and the probability of rebuilding to B_{MSY} within T_{MAX} equals or approaches 100 percent.

The commenter also differentiates between those stock assessments that contain uncertainty and those that do not contain uncertainty. Stock assessments are mathematical descriptions of what the data on a particular stock lead us to believe about the relative health and status of that stock. "Uncertainty" is a measure of the range around the best scientific estimates that come from the stock assessment. Uncertainty is not a lack of knowledge. Results that are close to the assessment's best estimate are likely to be close to the true situation, and other results are possible but unlikely. There are several factors that contribute to uncertainty in the stock assessment, including variability in the catch and survey data that go into the model, incompletely known factors about the biology of the fish, necessary simplifications in the assessment model itself, and changes in the actual productivity of the fish stock. Continued research helps us reduce each of these sources of uncertainty. However, given current research technology, it is unlikely that a stock assessment scientist working on wild fish stocks will have the opportunity to conduct a stock assessment with no uncertainty. Explaining this disconnect between a mathematician's definition of "uncertainty" and the public belief that "uncertainty" means "lack of knowledge" is a regular communication challenge for stock assessment scientists.

To the extent that the comment is intended to advocate a consistently conservative approach to establishing rebuilding parameters, the agency does employ a precautionary approach. However, as explained in the response to Comment 3, above, the Magnuson-Stevens Act and the national standard guidelines require that the Council and NMFS create overfished species rebuilding programs that both rebuild overfished species within T_{MAX} and minimize the adverse economic impacts of such programs on fishing communities.

Comment 5: The EA states that the methods of calculating the rebuilding parameters T_{MAX} and T_{MIN} are set at a national level. What is the relationship between the Magnuson-Stevens Act's national standards and the national standard guidelines?

Response: At Section 301(a), the Magnuson-Stevens Act sets 10 national standards for fishery management. These standards were created, amended, and updated through the series of legislative actions that created and have since amended the law first known as the 1976 Fishery Conservation and Management Act and now known as the Magnuson-Stevens Act. Section 301(b) directs the Secretary of Commerce to "establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans." This authority under the Magnuson-Stevens Act has been delegated to NMFS. NMFS has had national standard guidelines in effect for many years. The Magnuson-Stevens Act was amended in 1996 by the Sustainable Fisheries Act, which strengthened the overfishing prohibitions of the Magnuson Act and enacted the rebuilding provisions under which NMFS currently operates. After two public comment periods on a proposed rule, NMFS promulgated the final rule implementing the current national standard guidelines on May 1, 1998 (63 FR 24212). Those guidelines provide an interpretation of the national standards and are codified in Federal regulations at 50 CFR 600.310 through 600.355. The specific sections that relate to T_{MIN} and T_{MAX} are found in 50 CFR 600.310(e)(4)(ii)(A) and (B). These national standard guidelines apply to all fisheries, nation-wide, that are managed under the aegis of the Magnuson-Stevens Act.

Comment 6: For those rebuilding plan parameters that are to be specified in Federal regulations, we recommend full notice and comment rulemaking when these specific numeric criteria are changed via a stock assessment or other similar process.

Response: As discussed earlier in the responses to several comments, above, NMFS plans to codify for each overfished species a value for T_{TARGET} and a harvest control rule in Federal regulations at 50 CFR 660.370. Any future revisions to these parameters would be made via notice-and-comment rulemaking. Because NMFS expects that revisions to rebuilding parameters would occur as a result of a change in a stock assessment for an overfished

species, the notice-and-comment rulemaking for revisions to rebuilding parameters would generally occur simultaneously with a notice-and-comment rulemaking on harvest specifications and management measures.

Comment 7: We urge NMFS to ensure that the groundfish FMP establish OY levels for groundfish species consistent with the Magnuson-Stevens Act and NMFS Technical Guidance. National standard 1 of the Magnuson-Stevens Act requires that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States Fishing Industry" (16 U.S.C. 1851(a)(1)). For species that are not overfished, the Council and NMFS must ensure that management measures are aimed at achieving an OY value, by reducing harvest levels such that OYs are below the MSY level. For species that are overfished, the OY and management measures should be designed to achieve rebuilding goals. Further, NMFS should ensure that the FMP consider proxies for OY in the case of data poor situations. We urge consideration of proxies found in the Technical Guidance for these species in the 2004 specifications environmental impact statement.

Response: FMP policies on the setting of ABCs and OYs are generally consistent with national standard 1 and with the Technical Guidance to implement the biological aspects of national standard 1. The Council addressed Magnuson-Stevens Act guidance on setting acceptable biological catch (ABCs) and OYs with its 1998 Amendment 11 to the FMP. The FMP at Section 4.3 identifies three categories of stocks: Category 1 is stocks with quantitative assessments, Category 2 is stocks with nonquantitative assessments, and Category 3 is stocks for which there is not enough information to set ABC values.

Category 1 Stocks: Under the FMP at Section 4.3, ABCs for Category 1 species are to be set at the MSY harvest level. The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the current estimated biomass. In 2001, the Council's SSC conducted a harvest rate workshop that resulted in the Council developing new default harvest rate proxies. These harvest rate proxies have been in use since the 2002 fishing year: $F_{40\%}$ for flatfish, $F_{50\%}$ for rockfish (including thornyheads), and $F_{45\%}$ for other groundfish such as sablefish and lingcod. A rate of $F_{40\%}$ can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is, therefore, a more aggressive rate than $F_{45\%}$ or $F_{50\%}$.

The OY for each species or species group is set according to a series of rules that vary depending upon the relative abundance of the stock and upon the quantity and quality of scientific assessment on the stock. For stocks with stock assessments that indicate those stocks are above B_{MSY}, harvest specifications may be set such that OY = ABC, unless reductions in available harvest need to be made to account for: high degree of uncertainty about the biomass estimate and other parameters, anticipated bycatch mortality of that species, past OY levels resulted in overfishing occurring on that species, or international fishery management agreements regarding that species (FMP at 4.6.1). Regardless of where the OY is set for a stock above B_{MSY}, the fisheries will likely not be permitted to achieve that OY if that species co-occurs with an overfished species and fishing the more abundant stock must be constrained to protect the overfished stock.

Those stocks with stock assessments that indicate a population level between $B_{40\%}$ and $B_{25\%}$ are considered to be in a "precautionary zone." Under the FMP at Section 4.5.1 and 4.6.1, OYs for stocks in the precautionary zone will generally be reduced from ABC on a scale known as the "40–10" policy, demonstrated by the following figure:

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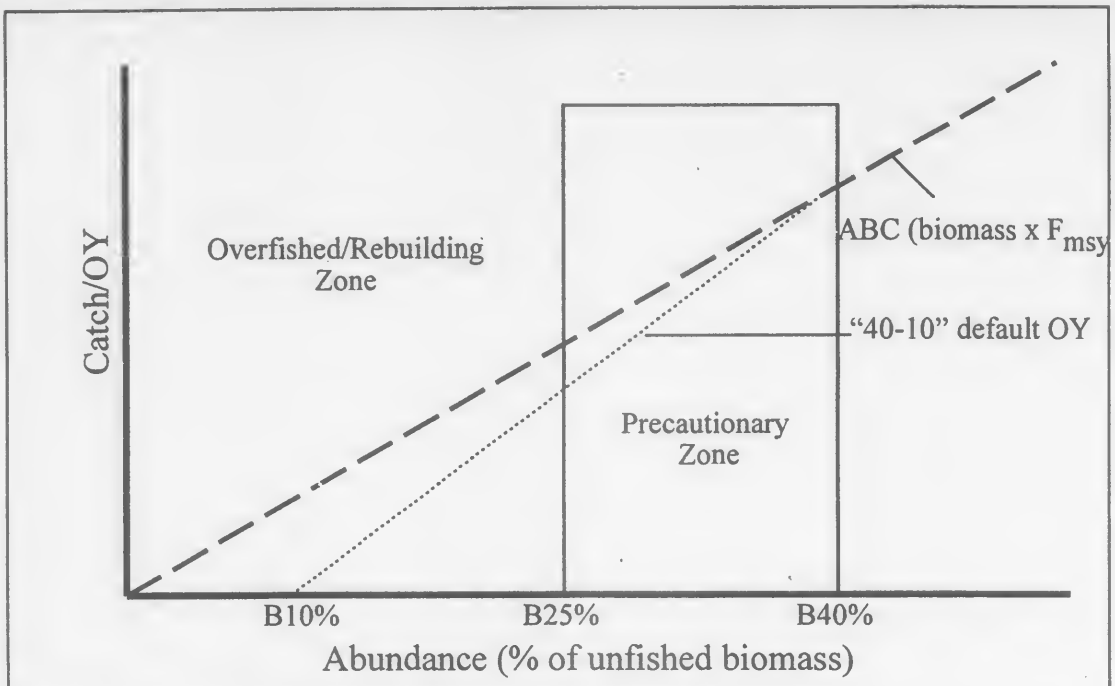

Figure 1: Illustration of default OY rule compared to ABC, known as "40--10 policy"

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As is shown in this figure, harvest level parameters for stocks in the precautionary zone are increasingly conservative as they are applied to stocks of lower abundance within the precautionary zone. NMFS and the Council have applied the 40–10 policy to stocks with biomasses estimated to be within the precautionary zone since Amendment 11 was implemented in 1999. These stocks in the precautionary zone are proposed to be managed at harvest levels reduced from OY by the 40–10 policy in 2004: sablefish, Dover sole, and shortspine thornyhead. The 40–10 policy is more precautionary than the Technical Guidance's recommendations for stocks below B_{MSY}. The Technical Guidance does not recommend reducing fishing mortality below F_{MSY} until the stock is at 75 percent of B_{MSY} (Technical Guidance at 35–37).

Stocks with stock assessments that indicate the biomass is below $B_{25\%}$ are considered overfished. Overfished species OYS are not set with a universally applicable policy. Each species' OY is set by a harvest rate intended to achieve the rebuilding goals for that species. Amendment 16–1 and its companion amendments, (16–2, 16–3, and 16–4) further develop harvest conservation principles explored in the FMP through Amendment 11. As discussed earlier in this document, Amendment 16–1 sets a process for and standards by which overfished species rebuilding plans will be developed. Amendment 16–2 (available for public comment on November 7, 2003, 68 FR 63053), Amendment 16–3 (under Council development), and Amendment 16–4 (to follow the 2004 whiting stock assessment) will establish rules by which OYS for each of the nine overfished species will be set under their respective rebuilding plans.

Category 2 Stocks: For stocks with nonquantitative stock assessments, the ABC is generally set based on the average of historic landings levels (FMP at 4.3.2). The FMP recognizes that an ABC based on average historical landings cannot be the upper harvest level for a species if historical landings have been unsustainable. Section 4.6.2 of the FMP governs the setting of OYS for Category 2 species. Under the OY policy for Category 2 species, precautionary downward adjustments are made to the OY from the ABC if there is a perception that the stock is below its MSY or if there is a high degree of uncertainty about the condition of the stock. This guidance is carried out through more specific Council policies for setting annual harvest values. ABC values are first calculated from average historic landings levels and then set by reducing the resultant average by 25 percent. Thus, an ABC for a Category 2 species is set at 75 percent of its average historic landings level. OY levels for Category 2 species are further reduced from their ABCs by 2 percent if they are species with less rigorous stock assessment, or by 50 percent if they are species with nonquantitative stock assessments. Thus an OY for a Category 2 species with a less rigorous stock assessment is set by multiplying the historic average landings level by 0.75, and then by multiplying that result by 0.75, ultimately resulting in an OY that is 56.25 percent of the historic average landings level. An OY for a Category 2 species with a nonquantitative assessment is set by multiplying the historic average landings level by 0.75, and then by multiplying that result by 0.5, ultimately resulting in an OY that is 37.5 percent of the historic average landings level. These policies, which were recommended by the Council's SSC, are consistent with but more precautionary than those described in the Technical Guidance for creating proxies in data poor situations. To see these policies in practice, refer to Table 1 in the 2004 specifications and management measures (69 FR 1380,

January 8, 2004), footnotes for minor rockfish.

Category 3 Species: When the Council first developed the groundfish FMP in the early 1980's, it swept a wide variety of species under the authority of the groundfish FMP. At the time, West Coast salmon fisheries were of paramount importance, thus the groundfish FMP served as the management vehicle for many species other than salmon. There is generally little known about Category 3 species, perhaps because they have historically low catch rates or abundance relative to other more widespread stocks, or because they are not vulnerable to survey sampling gear. These species may not appear on fish tickets because they are not taken in the fisheries or because they are not commercially desirable. If a fishery were to develop for a Category 3 species, then more information on that species would become available, possibly allowing it to be re-categorized as Category 1 or 2. For example, a new stock assessment is under development for cabezon, a Category 3 species that has become more common in the nearshore recreational and commercial fisheries in recent years. This stock assessment covers waters off California, where cabezon are most frequently found. Once the assessment is complete, cabezon off California will be considered a Category 1 stock. Category 3 species currently include: cabezon and greenling; some of the flatfish species that are either not often commercially valuable or which are too small to be regularly caught in legal groundfish trawl nets, such as butter, curlfin, flathead, rex, and sand soles, pacific sanddab, and starry flounder; the FMP's six elasmobranch species (big, California, and longnose skates, leopard and soupfin sharks, spiny dogfish); as well as, finescale codling, Pacific rattail, and ratfish. In the harvest specifications and management measures, these species are grouped into either the "other flatfish" or "other fish" categories, as appropriate, and have species group ABCs for each West Coast management area based on historical landings for those species groups. This policy is consistent with the Technical Guidance for those species that are believed to be above B_{MSY} for creating proxies in data poor situations. In general, there is not enough information about these species to determine whether they are above or below B_{MSY}, a pre-condition for using the data-poor proxy creation guidance in the Technical Guidance. For 2005 and beyond, the Council is considering whether to apply its policies for "remaining rockfish" and "other rockfish" to the "other flatfish" and "other fish" species categories, to provide a precautionary adjustment for these Category 3 species. To see these policies in practice, refer to Table 1 in the 2004 specifications and management measures (69 FR 1380, January 8, 2004), footnotes for "other flatfish" and "other fish."

Comment 8: The harvest control rule established in the FMP to rebuild each overfished species should be consistent with the Technical Guidance.

Response: Harvest control rules for overfished species are used to set annual OYs for those species. As discussed above in the response to Comment 7, OYs for overfished species are species-specific and are intended to achieve the rebuilding goals for a particular species. The FMP contains default harvest control rules for stocks above B_{MSY}, depleted stocks below B_{MSY} but above the overfished threshold and, through Amendment 16–2, species-specific harvest control rules for lingcod, canary rockfish, darkblotched rockfish, and POP. The default harvest control rule was described earlier in the response to Comment 7. As discussed earlier, the 40–10 harvest control rule is generally consistent with the Technical Guidance because harvest rates set by that rule are always less than or equal to the MSY control rule (which is the overfishing level) and rates decline at low stock biomass levels. Species-specific control rules for the remaining overfished species will be added to the FMP through Amendments 16–3 and/or 16–4.

The Technical Guidance at section 3.4 provides suggestions for calculating mean generation time for overfished species, default rebuilding plans in the absence of species-specific rebuilding plans, and on addressing the role of uncertainty in rebuilding plans. Methods used by stock assessment scientists to determine mean generation time vary by species and according to quantity and quality of data available on that species' life history. For Amendment 16–2 species with T_{MIN}s greater than 10 years (canary rockfish, darkblotched rockfish, POP,) mean generation times were calculated with the approach recommended in the Technical Guidance.

We have already addressed the Council's default rebuilding policy in the response to Comment 7. For species-specific rebuilding plans, the Technical Guidance offers three suggestions for setting the rebuilding plan parameters and harvest control rule. First, the Technical Guidance suggests that, "The maximum rebuilding period, T_{MAX}, should be 10 years, unless T_{MIN} is greater than 10 years, when T_{MAX} should be equal to T_{MIN} plus one mean generation time." This is the definition of T_{MAX} provided by the national standard guidelines at section 600.310(e)(4)(ii)(B)(*3*) and is the method that NMFS and the Council use to calcluate T_{MAX} for overfished groundfish species.

Second, the Technical Guidance suggests that "the target rebuilding time period, T_{TARGET}, should be as short as possible and lower than T_{MAX} (although it could be adjusted upward to T_{MAX} under the circumstances described in Section 600.310(e)(4) of the national standard guidelines.) We suggest that T_{TARGET} not exceed the midpoint between T_{MIN} and T_{MAX}." T_{TARGET}s set for overfished groundfish species do not exceed T_{MAX}. We addressed the suggestion that T_{TARGET} not exceed the midpoint between T_{MIN} and T_{MAX} earlier in this document, in the response to Comment 3.

Finally, the Technical Guidance suggests that "if the stock is well below the minimum stock size threshold (MSST) (e.g. $B \leq \frac{1}{2}MSST$), it may be necessary to set the fishing mortality rate as close to zero as possible (i.e., to that associated with unavoidable levels of bycatch) for a number of years. Since 2000, NMFS and the Council have pursued a policy of restricting or eliminating opportunities for fishers to directly target overfished stocks. In order to reduce unavoidable bycatch, directed harvest of more abundant stocks that co-occur with overfished species has also been curtailed. In 1998, prior to the declaration of any groundfish as overfished, the total commercial groundfish landings by weight were 274,690 mt. Total commercial groundfish landings by weight in 2003 were 168,589 mt, an approximate 39–percent reduction in commercial harvest. These reductions reflect measures to reduce overfished species take to unavoidable bycatch levels and to reduce opportunities for incidental harvest by also reducing directed fishing opportunities for more abundant species. The suite of management measures NMFS has implemented to limit overfished species take to unavoidable bycatch is described later in this document in the response to Comment 13.

On page 38, the Technical Guidance suggests addressing uncertainty with the guideline that "rebuilding plans be designed to possess a 50–percent or higher chance of achieving B_{MSY} within T_{TARGET} years, and a 90–percent or higher chance of achieving B_{MSY} within

T_{MAX} years." Rebuilding plans for the overfished species in Amendment 16–2 have been designed with a 50–percent chance of achieving B_{MSY} within T_{TARGET} years, although not with a 90–percent chance of achieving B_{MSY} within T_{MAX} years. Rebuilding plans in Amendment 16–2 provide a 60–percent chance for canary rockfish and lingcod, a 70–percent chance for POP, and an 80–percent chance for darkblotched rockfish to achieve their respective B_{MSY} levels within T_{MAX} years. As mentioned in the Preface to the Technical Guidance itself, it provides guidance on "those aspects of scientific fishery management advice that have biological underpinnings" and it recognizes that there are other important factors for fisheries management, such as the social and economic goals of the Magnuson-Stevens Act. Probabilities of achieving B_{MSY} within T_{MAX} years that are less than 90 percent have been established in order to meet varying needs of West Coast fishing communities, as discussed earlier in this document.

Comment 9: One commenter stated that the Magnuson-Stevens Act requires the Secretary of Commerce to review rebuilding plans for overfished species every 2 years to ensure adequate progress toward rebuilding goals (16 U.S.C. 304(e)(7).) The Council has recommended reviewing rebuilding plans every 2–5 years, with progress toward rebuilding to MSY only to be reviewed when new stock assessments are provided for the species in question. This commenter expected that, regardless of the review process that the Council has recommended through Amendment 16–1, the Department of Commerce will meet its duty to review the rebuilding plans every 2 years.

A second commenter assumed that the Council's rebuilding plan review process was intended to be a substitute for a Secretarial review process. This commenter read Amendment 16–1 as authorizing NMFS and the Council to avoid the Magnuson-Stevens Act requirement to review the adequacy of rebuilding progress for overfished species managed under rebuilding plans every 2 years.

Response: The first commenter is correct. The FMP describes the Council's responsibilities. The Council's intended rebuilding plan review schedule is in Amendment 16–1. This schedule does not relieve NMFS of its duty to review, every two years, overfished species rebuilding plans for progress toward rebuilding goals. In addition, NMFS has worked with the Council staff to add a sentence to the FMP at the end of Section 4.5.3.6 to read, "Regardless of the Council's schedule for reviewing overfished species rebuilding plans, the Secretary of Commerce, through NMFS, is required to review the progress of overfished species rebuilding plans toward rebuilding goals every two years, per the Magnuson-Stevens Act at 16 U.S.C. 304(e)(7)." This statement is added to the FMP for the sake of clarity and in no way changes the intent or effect of either the FMP or Amendment 16–1.

Comment 10: We recommend that Amendment 16–1 be expanded to include a discussion of the procedures that would be used to revise rebuilding plans. Rebuilding parameters specified in the FMP should be changed only when new scientific information is available that would warrant modification of these parameters. Changes to specifications for T_{MIN}, T_{MAX}, and T_{TARGET} should only occur in response to a resolution of scientific uncertainty. These values should not be revised to accommodate greater direct or indirect harvest of overfished species.

Response: As described above in the responses to Comments 3 and 4, T_{MIN} is the minimum time that it would take to rebuild the stock in the absence of fishing. An estimate of a stock's rebuilding time in the absence of fishing depends upon the estimate of that stock's growth rate. A stock's growth rate is affected by recruitment as reduced by natural mortality. Our understanding of recruitment rates tends to change with each new stock assessment, as new data are added to the assessment and as new year classes enter the fishery. Thus, as stock assessments are updated for each overfished species with the best available science, the T_{MIN} estimate for those species will likely also be updated. T_{MIN} is calculated from T_0 (the year the species was declared overfished) and that rebuilding start date would not change.

T_{MAX} is T_{MIN} plus one mean generation time. Thus, a species' estimated T_{MAX} could change if that species' estimated T_{MIN} changes. T_{MAX} could also change if the best available scientific information on a species' mean generation time changes, which would be characterized as reduced uncertainty about the mean generation time parameter.

Unlike T_{MIN} and T_{MAX}, T_{TARGET} is not set based solely on scientific information about a particular stock's recruitment or life history characteristics. T_{TARGET} is T_{MIN}, plus a time period that "may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates," although T_{TARGET} may not exceed T_{MAX}. Section 4.5.3.4 of the FMP, as added by Amendment 16–1, provides examples of when rebuilding plan parameters might be changed, but does not limit triggers for those changes: "...Since the target year [T_{TARGET}] is a key rebuilding parameter, it should only be changed after careful deliberation. For example, the Council might recommend that the target year be changed if, based on new information, they determine that the existing target year is later than the recomputed maximum rebuilding time (T_{MAX}) or if a recomputed harvest control rule would result in such a low optimum yield as to cause substantial socioeconomic impacts. These examples are not definitive: the Council may elect to change the target year because of other circumstances. However, any change to the target year or harvest control rule must be supported by commensurate analysis." If updated scientific information in a new stock assessment for a particular species warrants a change to that species' T_{MIN} and T_{MAX}, the Council may also consider changing the T_{TARGET} for that species. In particular, T_{TARGET} might be revised if that revision would prevent the complete closure of one or more sectors of the fishery.

Comment 11: The Council's preferred alternative for the setting of standards used to determine whether rebuilding progress has been adequate to achieve rebuilding goals is that each rebuilding plan would have its own set of standards specific to the overfished stock in question. We ask that the Council's SSC or some other scientific body be convened to develop standards for measuring progress of rebuilding plans so as to meet the obligations of the Council's preferred alternative and to ensure that rebuilding time frames are not modified in the future based solely on fisheries management's failure to achieve fishing mortality related restrictions.

Response: NMFS agrees with the commenter's suggestion to ask the Council's SSC to review and develop standards for measuring the progress of rebuilding plans. NMFS made this request to the Council and SSC at the Council's November 2003 meeting. NMFS also made this request to the Council in its letter of approval for Amendment 16–1. In that letter, NMFS recommended that setting standards for measuring the progress of rebuilding plans be included in the SSC's Terms of Reference for the Stock Assessment Review (STAR) processes. NMFS review of the adequacy of progress of

rebuilding plans will be primarily informed by stock assessment updates. By including the setting of rebuilding plan progress standards in the STAR processes for overfished species, the NMFS/Council process for developing and reviewing stock assessments would continue the link between stock assessments and rebuilding plans for overfished species.

Comment 12: As the Council and its SSC work to develop standards for measuring the progress of rebuilding plans, we recommend adopting a standard such that if the probability of achieving T_{TARGET} falls below 50 percent, then progress will be considered inadequate and the harvest control rule must be adjusted to increase the probability of rebuilding within T_{TARGET} to at least 50 percent. We further recommend that, on an annual basis, NMFS and/or the Council compare annual total mortality levels with specified OY values to determine if overages have occurred. If overages have occurred, an inseason adjustment to harvest mortality rates should be made to compensate for these overages.

Response: Section 4.5.3.6 of the FMP, as inserted by Amendment 16–1, includes examples of standards that might be used to review rebuilding plan progress. The standard provided by the commenter is included in that section of the FMP and would be reviewed for use with particular overfished stocks in the process described in the response to Comment 11.

NMFS is required to annually report to Congress on whether ABC values have been exceeded, as exceeding an ABC set at F_{MSY} would be considered overfishing. In looking at whether ABC values have been exceeded, NMFS also notes whether OY values have been exceeded and works with the Council to revise management measures so that OYs for the same species for subsequent years are not exceeded. Under the Technical Guidance at Section 1.3, OYs are target levels that, so long as they are less than or equal to MSY, should not be exceeded more than 50 percent of the time, nor on average. None of the West Coast groundfish OYs are knowingly set higher than MSY. Management measures are intended to achieve OYs without exceeding them, unless the achievement of a particular species' OY would negatively affect the rebuilding of a co-occurring overfished species. In such a case, management measures would be designed to keep the harvest under the OY of the healthy stock in order to rebuild the overfished stock. Thus, NMFS will continue to monitor whether the fisheries have exceeded ABCs or OYs and will continue to work with the Council to make inseason adjustments to management measures to prevent the fisheries from regularly exceeding OY target levels.

The Technical Guidance at Section 3.4 suggests that "...[S]tock rebuilding should be monitored closely so that adjustments can be made when rebuilding milestones are not being met for whatever reason. For example, if target rebuilding Fs (fishing mortality rates set for overfished species management) are exceeded due to quota over-runs, subsequent target Fs should typically be adjusted downwards to put the stock back on the rebuilding time table." For West Coast groundfish, NMFS and the Council monitor stock rebuilding progress through regular stock assessments. Stock assessments take harvest overages and underages into account in evaluating the status of a stock and whether rebuilding milestones are being met. F rates set subsequent to each new stock assessment will be set to keep the stock on its rebuilding trajectory.

Comment 13: As we read Amendment 16–1, it does not require the Council and NMFS to include in a rebuilding plan those measures that are necessary to rebuild the overfished species in question. We are particularly concerned that Amendment 16–1 fails to mandate that the Council and NMFS include in rebuilding plans the bycatch minimization and habitat protection measures necessary to rebuild overfished groundfish species. The Magnuson-Stevens Act requires that each FMP minimize adverse effects [of fishing activities] on essential fish habitat, identify actions to protect essential fish habitat, and include all practicable measures to minimize bycatch and bycatch mortality. Further, Amendment 16–1 violates the Magnuson-Stevens Act's requirement that rebuilding plans be sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish" (16 U.S.C. 1854(e)(3)(A)) because it suggests that rebuilding plans could use "flexible specifications" that would be implemented through the annual or biennial harvest specifications and management measures process. These types of specifications are so vague as to be meaningless and offer no protection to overfished species.

Response: West Coast groundfish fisheries are multi-species fisheries and the FMP covers over 80 species of fish. The nine overfished species managed under the FMP co-occur with many other, more abundant stocks. Because of this commingling of overfished and more abundant stocks, the varied fisheries that take groundfish all tend to have some effect on at least one of the overfished species. The FMP addresses how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and define the parameters that govern the rebuilding of a particular species. The harvest specifications and management measures, on an annual or biennial basis, address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are intended to address all of the fisheries that take groundfish and, in large part, to minimize total catch of overfished species. Management measures in these regulatory packages are based on the most recently available scientific information on the status of the various groundfish stocks and fisheries. In managing a multi-species fishery, it is not necessary or practical to include all of the management measures that will be used to rebuild a particular overfished species in that species' rebuilding plan. It is important for the FMP as a whole to provide the structure to implement a variety of different management measures to rebuild overfished stocks, and to manage the fisheries as a whole in accordance with the Magnuson-Stevens Act. Relying on the whole FMP to protect overfished stocks within a multi-species fishery does not violate the Magnuson-Stevens Act.

The FMP and its rebuilding plans are sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish" (16 U.S.C. 1854(e)(3)(A). They are neither vague nor meaningless. This Amendment 16–1 sets out the required elements for a rebuilding plan. The FMP states in section 4.6.1.5. that "OY recommendations will be consistent with established rebuilding plans and achievement of their goals and objectives. . . . (b) In cases where a stock or stock complex is overfished, Council action will specify OY in a manner that complies with rebuilding plans developed in accordance with Section 4.5.2. The Plan further states at 5.1.4 "For any stock the Secretary has declared overfished or approaching the overfished condition, or for any stock the Council determines is in need of rebuilding, the Council will implement such periodic management measures as are necessary to rebuild the stock by controlling harvest mortality, habitat impacts, or other effects of fishing activities that are subject to regulation under the biennial process. These management measures will be consistent with any approved rebuilding plan." Most management measures used in the fishery are described in section 6

of the FMP. The existing emergency rule for groundfish for January and February 2004, (69 FR 13222; January 8, 2004), implements the first four rebuilding plans, and the interim rebuilding strategies for the remaining overfished species for January and February. The proposed rule for groundfish for 2004 (69 FR 1380; January 8, 2004), proposes ABCs/OYs and management measures that implement the rebuilding plans. The management of overfished species for 2004 is summarized at 69 FR 1380.

The Magnuson-Stevens Act at section 303(a) describes the required provisions of any Federal fishery management plan. Sub-paragraph 303(a)(7) requires that the FMP describe and identify essential fish habitat (EFH) and "minimize to the extent practicable adverse effects on such habitat caused by fishing..." Sub-paragraph 303(a)(11) requires that the FMP "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority: (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided."

Amendment 11 to the FMP provided a description within the FMP of EFH for West Coast groundfish. Amendment 11 was challenged in American Oceans Campaign v. Daley 183 F. Supp. 2d1 (D.C.C. 2000,) along with challenges to fisheries managed by the Caribbean, Gulf of Mexico, New England, and North Pacific fishery management councils. For West Coast groundfish, the Court found that NMFS had not conducted an adequate National Environmental Policy Act (NEPA) analysis on the effects of fishing on groundfish EFH. NMFS is drafting an environmental impact statement (draft EIS) on groundfish EFH and is scheduled to release the draft EIS for public review through the Environmental Protection Agency in February 2005. Further information on this EIS is available at: *http://www.nwr.noaa.gov/1sustfsh/groundfish/eis_efh/efh/*.

Amendment 11 described EFH for West Coast groundfish based on information that was available in 1998, when the amendment was completed. Since that time, there have been notable increases in funding for EFH research and improvements in ocean habitat mapping technologies. These research and mapping improvements are informing the drafting of the new EFH DEIS. Until the completion of that DEIS, Amendment 11's descriptions of EFH for each of the overfished species must serve to characterize species-specific EFH and to inform management measures intended to rebuild those species. For example, the EFH appendix to Amendment 11 (online at *http://www.nwr.noaa.gov/1sustfsh/efhappendix/page1.html*) provides descriptions of the habitats used by the 80+ species in the FMP, including the ocean depths where those species are commonly found. The Council used these habitat descriptions in the development of its Rockfish Conservation Areas (RCAs), which are intended to protect the suite of continental shelf and slope overfished species in waters where they are commonly found. RCAs are primarily intended to protect overfished stocks from being incidentally harvested by vessels targeting more abundant species. Closure of these areas, however, also protects habitat within the RCAs from the effects of groundfish fishing gear. NMFS anticipates that the new EFH EIS will allow the Council to incorporate more data-rich descriptions of the EFH of individual groundfish species into its groundfish fishery management planning.

Section 303(a) of the Magnuson-Stevens Act requires that the FMP as a whole include a description of EFH and EFH protection measures. It does not require that each amendment to the FMP describe EFH and provide EFH protection measures. The commenter is correct in stating that Amendment 16–1 does not require overfished species rebuilding plans to include EFH protection measures. However, the commenter is incorrect in then concluding that overfished species are not adequately protected by the FMP.

Amendment 13 to the FMP addressed bycatch in the West Coast groundfish fisheries and was also challenged in Court, Pacific Marine Conservation *Council, Inc.* v. *Evans*, 200 F. Supp. 2d1194 (N.D. Calif. 2002). The Court held that Amendment 13 failed to establish an adequate bycatch reporting methodology, did not comply with the duty to minimize bycatch and bycatch mortality, and violated NEPA because NMFS did not take "hard look" at the environmental consequences of Amendment 13, and failed to consider a reasonable range of alternatives and their environmental consequences. In particular, the Court concluded that Amendment 13 failed to establish a standardized reporting methodology because it failed to establish either a mandatory or an adequate observer program. Further, it failed to minimize bycatch and bycatch mortality because it failed to include all practicable management measures in the FMP itself. The Court also found a lack of reasoned decisionmaking because four specific bycatch reduction measures (fleet size reduction, marine reserves, vessel incentives, and discard caps) were rejected without consideration on their merits. With respect to NEPA, the environmental assessment prepared for Amendment 13 failed to address adequately the ten criteria for an action's significance set forth in the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.27(b), and also failed to analyze reasonable alternatives, particularly the immediate implementation of an adequate at-sea observer program and bycatch reduction measures.

NMFS is drafting an EIS to address the court's requirement for a new NEPA analysis on bycatch in the groundfish fisheries and is scheduled to release the draft EIS for public review through the Environmental Protection Agency in early 2004. Further information on this EIS is available at: *http://www.nwr.noaa.gov/1sustfsh/groundfish/eis_efh/pseis/*. NMFS has implemented numerous bycatch reduction measures since the Council's approval of Amendment 13 in 2000. The agency has supported full retention or full utilization Exempted Fishing Permit (EFP) programs for the Washington arrowtooth flounder trawl, yellowtail rockfish trawl and longline dogfish fisheries, and for the California flatfish trawl fishery. Shorter-than-year-round fishing seasons have been set for various species and sectors of the groundfish fleet in order to protect different overfished groundfish species. Amendment 14 to the FMP implemented a permit stacking program for the limited entry fixed gear fleet that reduced the number of vessels participating in the primary sablefish fishery by about 40 percent. In 2003, NMFS implemented a buyback of limited entry trawl vessels and their permits, reducing the groundfish trawl fleet by about one-third. NMFS has implemented gear modification requirements that restrict the use of trawl gear in rockier habitat and constrain the catching capacity of recreational fishing gear. Higher groundfish landings limits have been made available for trawl vessels using gear or operating in areas where overfished species are less likely to be taken. Species-to-species landings limit ratios have been thoroughly re-examined in a groundfish bycatch model first introduced in 2002 and modified each intervening year as new observer program data become available. The development and use of this bycatch model and the implementation

of the NMFS West Coast Groundfish Observer Program (WCGOP) in August 2001 serve to address the court's order that NMFS implement an adequate bycatch assessment methodology. The RCAs described earlier in this document and implemented through 50 CFR 660.304 and the harvest specifications and management measures are large time/area closures that affect the entire West Coast and are specifically designed to reduce the incidental catch of overfished groundfish species in fisheries targeting more abundant stocks.

The FMP, as amended by Amendment 16–1, complies with the Magnuson-Stevens Act at section 303(a)(11). NMFS has had the WCGOP, which uses a standardized reporting methodology, in place since August 2001. Data from this observer program, from historic observer programs, and from fishery-dependent data inform the bycatch model for West Coast groundfish fisheries. These data sources together with their use in the bycatch model, which is used to analyze where and when different sectors of the groundfish fleet have targeted and may target groundfish, comprise an adequate reporting methodology on the amount and type of bycatch occurring in the fishery. NMFS has implemented numerous management programs and measures to reduce bycatch in the groundfish fisheries. The upcoming draft EIS on bycatch in the groundfish fisheries will provide information on how NMFS might further improve its bycatch reduction program for West Coast groundfish fisheries.

Comment 14: Amendment 16–1 fails to mandate an adequate observer program for the Pacific Coast groundfish fishery. While Amendment 16–1 does require NMFS to "implement an observer program through a Council-approved regulatory framework," (FMP Section 6.1.5.2) it does not contain any requirements for the scope or adequacy of this observer program. The Magnuson-Stevens Act requires that NMFS establish in the FMP a bycatch assessment methodology that is sufficient to show "the amount and type of bycatch occurring in the fishery." 16 U.S.C. 1853(a)(11). The court in PMCC v. Evans, supra, rejected Amendment 13 in part because it failed to establish a mandatory and adequate observer program in the FMP. Because Amendment 16–1 does not mandate an adequate observer program in the FMP, it violates the Magnuson-Stevens Act and fails to cure Amendment 13's failure under *PMCC* v. *Evans*.

Response: At 16 U.S.C. 1853(a)(11), the Magnuson-Stevens Act requires that FMPs, among other things, "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery..." Amendment 16–1 revises the FMP so that it states at section 6.5.1.2, "The [NMFS] Regional Administrator will implement an observer program through a Council-approved Federal regulatory framework. Details of how observer coverage will be distributed across the West Coast groundfish fleet will be described in an observer coverage plan. NMFS will publish an announcement of the authorization of the observer program and description of the observer coverage plan in the **Federal Register**."

NMFS first implemented an observer program for the West Coast groundfish fisheries using a standardized bycatch reporting methodology in August 2001. The WCGOP observer coverage plan is available via the internet at: *http://www.nwfsc.noaa.gov/research/divisons/fram/Observer*. NMFS published its announcement of the authorization of the observer program and description of the observer coverage plan on January 10, 2002 (67 FR 1329). In the first year of the WCGOP (August 2001–August 2002), NMFS focused observer coverage largely on the non-whiting groundfish trawl fleet, with some pilot effort in the nontrawl limited entry and open access fleets. Observer coverage for the nontrawl fleet, particularly for limited entry vessels with sablefish endorsements expanded during the second year of the observer program (September 2002–August 2003). In September 2003, NMFS reported to the Council on bycatch modeling and observer data developments. WCGOP has focused its coverage on the limited entry trawl fleet because that fleet annually makes greater than 95 percent (by weight) of commercial West Coast groundfish landings coastwide (PacFIN, 1999–2003). Under the WCGOP coverage plan, the program has a goal of 10–percent coverage of trawl landings in any one year. With its 30–40 observers available each year, the WCGOP has been able to select each trawl fleet participant for coverage for at least one cumulative limit period in each year. Observer coverage levels are dependent upon the number of vessels actively participating in the fishery and on available program funding. Data from the first year of the observer program are available on the WCGOP site, mentioned earlier in this paragraph. NMFS is evaluating data from the second year of observer coverage and plans to release a data report on the WCGOP activities over September 2002–August 2003 in January 2004.

Following the release of the first year of WCGOP data in January 2003, NMFS incorporated observer program data on the bycatch of overfished species into the bycatch model. The Council began to use observer data to inform inseason groundfish management at its April 2003 meeting. For the 2004 fishing year, NMFS has further revised the bycatch model to incorporate discard rates on both overfished and targeted species, as generated by observer data. Because the second year of the WCGOP increased coverage of the limited entry nontrawl fleet, NMFS plans to further modify the 2004 bycatch model to incorporate nontrawl data once it has compiled and released that second year's data. The agency expects that data from the second year of the WCGOP will be incorporated into inseason groundfish fisheries management by the April 2004 Council meeting, and will be used in the development of 2005–2006 management measures.

With Amendment 16–1, the FMP mandates an observer program for the groundfish fishery, which NMFS has implemented. The commenter also wishes the FMP to discuss the scope and adequacy of an observer program, whereas the FMP defers the design of the observer program to NMFS.

Over the past year, NMFS has been reviewing the agency's approach to standardized bycatch monitoring programs for all federally managed fisheries. The report, "Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs," is available on the internet at: *http://www.nmfs.noaa.gov/bycatch.htm*. Also available at that website is the "NOAA Fisheries Objectives, Protocol, and Recommended Precision Goals for Standardized Bycatch Reporting Methodologies." This latter report addresses the question of the adequacy of an observer program or other standardized reporting methodology by setting "precision goals" for monitoring programs. According to this report, the levels of precision NMFS strives to achieve for fishery resources, excluding species protected under the ESA or MMPA, caught as bycatch in a fishery as "a 20–30 percent CV [coefficient of variation] for estimates of total discards (aggregated over all species) for the fishery; or if total catch cannot be divided into discards and retained catch then the recommended goal for estimates of total catch is a CV of 20–30 percent." In setting these precision goals, NMFS recognizes that "(1) there are intermediate steps in increasing precision which may not immediately achieve the goals; (2) there are circumstances in which higher levels of precision may be desired, particularly

when management is needed on fine spatial or temporal scales; (3) there are circumstances under which meeting the precision goal would not be an efficient use of public resources; and (4) there may be significant logistical constraints to achieving the goal."

The "Evaluating Bycatch" report characterizes the WCGOP as a "developing" observer program, meaning that it is a program "in which an established stratification design has been implemented and alternative allocation schemes [for observer coverage] are being evaluated to optimize sample allocations by strata to achieve the recommended goals of precision of bycatch estimates for the major species of concern." The next step beyond a developing observer program is a "mature" program "in which some form of an optimal sampling allocation scheme has been implemented. The program is flexible enough to achieve the recommended goals of precision of bycatch estimates for the major species of concern considering changes in the fishery over time."

As discussed above, NMFS has released the second year of observer data in January 2004 (*http://www.nwfsc.noaa.gov/research/divisions/fram/Observer*). Because observer coverage in the WCGOP has been largely focused on the trawl fishery, NMFS expects that it will have achieved the NMFS precision goals of 20–30 percent CV for estimates of total discards in the trawl fishery and of 20–30 percent CV for estimates of species-specific discards of those overfished species that are commonly taken in the trawl fishery. For overfished species that are either not commonly taken in the trawl fishery, such as yelloweye rockfish, or species that are unavailable to the fisheries because of large area closures, such as cowcod, NMFS expects that the current trawl-focused sampling program will not achieve the 20–30 percent CV precision goal. As it works toward becoming a mature observer program, the WCGOP will likely have to increase observer coverage of nontrawl vessels in order to get a more precise estimate of yelloweye rockfish bycatch. For cowcod, a rare event species with large portions of its habitat closed to fishing, evaluation of annual mortality may have to take some form other than a fishery observation program.

At section 6.3.3, the FMP identifies the management need for an observer program or other bycatch measurement program as an aid for the Council to "better identify and prioritize the bycatch problems in the groundfish fishery, based on the expected benefits to the U.S. and on the practicality of addressing these problems." The Council has used data from WCGOP to re-shape its landings limits and time/area closures. The Council has also used WCGOP data to evaluate species-to-species landings limit ratios, as well as species-to species catch ratios in the bycatch model. NMFS expects that the WCGOP will continue to meet the Council's need to identify and prioritize bycatch problems in the groundfish fishery, and that WCGOP data will continue to directly inform both annual and inseason management measures.

Comment 15: On the issue of what legal obligations apply if a groundfish species is listed under the ESA. Amendment 16–1 must make absolutely clear that NMFS and the Council must comply with all obligations imposed by both the Magnuson-Stevens Act and the ESA.

Response: Amendment 16–1 establishes a new section 4.5.3.7 in the FMP. This section provides guidance on how the Council and NMFS would address the mandates of the Magnuson-Stevens Act and the ESA if a groundfish species were to be listed as either threatened or endangered under the ESA at some future time. Section 4.5.3.7 states that "measures under a[n ESA] recovery plan or 'no jeopardy' standards in a biological opinion will supercede [Magnuson-Stevens Act] rebuilding plan measures and targets if they will result in the stock rebuilding to its target biomass by an earlier date than the target year identified in the current rebuilding plan." This section is intended to guide the Council and NMFS to ensure that, if a species is listed under the ESA, rebuilding and recovery will follow the mandates of both the Magnuson-Stevens Act and the ESA, while also rebuilding the stock at the most rapid rate required by law. Amendment 16–1 does not imply, nor does it have the effect of providing NMFS and/or the Council with an avenue to fail to comply with either the Magnuson-Stevens Act or the ESA for any species that may be managed under both of these laws.

Comment 16: In our review of the amendatory language for the FMP, we noted that Section 4.2 of the FMP (Determination of MSY or MSY Proxy and B_{MSY}) contains some outdated language, "...management should avoid fishing rates that hold biomass below B_{MSY} for long periods." This language does not comport with the Magnuson-Stevens Act and should be removed from the FMP.

Response: NMFS has worked with Council staff to ensure that this sentence is removed from the FMP. The paragraph containing this sentence is essentially narrative and the referenced sentence not only does not comport with the Magnuson-Stevens Act, but also does not comport with FMP policies for setting harvest rates. NMFS and Council staff believe that leaving this sentence in the FMP was an editorial oversight and removing it now in no way changes the intent or effect of either the FMP or Amendment 16–1.

Comment 17: Amendment 16–1 adds a new sentence to the FMP that reads in reference to the decline of overfished stock abundance, "Further declines below the overfished levels in the 1990s were due mostly to much lower than expected recruitment." While recruitment is a big part of the current plight of groundfish, many other factors contributed to the condition of these species. Improper accounting of bycatch in the 1980s and 1990s and the failure to heed scientific advice were contributing factors to the decline of groundfish stocks. Amendment 16–1 also proposes to delete language regarding a historical account of the Council's use of fishing mortality rates based on scientific information. We urge NMFS to keep these discussions in the FMP to better document the genesis of current fishing mortality rates.

Response: NMFS has worked with Council staff to retain the historical discussion of how the Council and its SSC have reviewed and revised groundfish harvest policies over time. This historical information provides a more accurate characterization of groundfish overharvest in the 1990s. As discussed in the FMP, groundfish science in the 1990s was characterized in part by increasing evidence that groundfish recruitment rates were lower than had been thought. A 2000 review of groundfish harvest rates by the Council's SSC showed that then-current scientific information indicated both lower than historically estimated recruitment levels for West Coast groundfish and a corresponding need for lower than historically used harvest rates. Since 2000, NMFS and the Council have set ABCs for groundfish species at the following rates: $F_{40\%}$ for flatfish, $F_{50\%}$ for rockfish (including thornyheads), and $F_{45\%}$ for other groundfish such as sablefish and lingcod. Upon reviewing this historical language, NMFS and Council staff agreed that the sentence discussed by the commenter should be changed to read, "Further declines below the overfished levels in the 1990s were due in large part to harvest rate policies that were later discovered to not be sustainable. More recent stock assessments indicate that West Coast

groundfish stocks likely have lower levels of productivity than other similar species worldwide. Based on this retrospective information, harvest rate policies in the 1990s were too high to maintain stocks at B_{MSY}. The Council revised its harvest rate policies for lower levels of production, described [later in the FMP]." This section of the FMP is essentially narrative in nature and this revision would in no way change the intent or effect of either the FMP or Amendment 16–1.

Federal Regulations under Amendment 16–1

Regulations to implement Amendment 16–1 establish a new section of the Federal groundfish regulations at 50 CFR 660.370, "Overfished Species Rebuilding Plans." Because Amendment 16–1 provides a framework for future rebuilding plans, the regulations implemented through this action similarly provide a framework within Federal groundfish regulations for future species-specific rebuilding plans. On November 7, 2003 (68 FR 63053), NMFS published a Notice of Availability for Amendment 16–2 to the FMP, which would set the first four overfished species rebuilding plans (canary rockfish, darkblotched rockfish, lingcod, POP) in the FMP and implement those rebuilding plans within 50 CFR 660.370. Public scoping for Amendment 16–3, which would cover the next four rebuilding plans (bocaccio, cowcod, widow rockfish and yelloweye rockfish), was held at the Council's November 2003 meeting. The Council is scheduled to finalize Amendment 16–3 at its April 2004 meeting, after which it will submit the amendment to NMFS for review. The final rebuilding plan for Pacific whiting, will be Amendment 16–4, is scheduled for Council consideration and NMFS implementation in 2004.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 16–1 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared a FRFA describing the impact of this action on small entities. The FRFA incorporates the IRFA which was summarized in the proposed rule on September 5, 2003 (68 FR 52732).

The following is a summary of the FRFA. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and **BACKGROUND** of the preamble to the proposed rule for this action and at the beginning of this final rule. There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This action does not duplicate, overlap, or conflict with other Federal rules. None of the comments received on the proposed rule addressed the economic impacts of the rule.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. Approximately 1,560 vessels participate in the West Coast groundfish fisheries. Of those, about 410 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,150 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the SBA. This final rule is not expected to yield disproportionate economic impacts between those small and large entities. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

This final rule is administrative in nature and affects only the administrative process by which individual species rebuilding plans are formulated, and so does not have significant adverse economic effects on consumers, producers or processors of groundfish. The Council considered the form (FMP amendments, regulations, a combination thereof) and required elements of a rebuilding plan. The remaining issues are concerned with setting internal Council standards for periodic review and modification of rebuilding plans, and defining the interaction of a rebuilding plan with recovery plans for a rebuilding species that is subsequently listed under the ESA.

For the main issue considered in this action, the form of rebuilding plans, the Council considered 4 alternatives. The first alternative, the status quo alternative, would have maintained rebuilding plan formatting standards from Amendment 12. These status quo formatting standards were disapproved by the Court because they did not set rebuilding plans in the form of an FMP, an FMP amendment, or Federal regulations. The Council did not adopt the status quo alternative because it had already been disapproved by the Court. The second alternative would have implemented rebuilding plans as FMP amendments, with rebuilding parameters specified in the FMP. This second alternative was not adopted by the Council because it would have created a burdensome process for reviewing and revising rebuilding plan parameters and goals, possibly slowing the inclusion of the most recently available science into rebuilding plans. The third alternative would have implemented rebuilding plans entirely as Federal regulations, with T_{TARGET} and a harvest control rule for each overfished species specified in regulations. This third alternative was not adopted by the Council because it would have separated rebuilding plan parameters and goals from rest of the Council's policies on groundfish harvest rates, which are found within the FMP. The final and preferred alternative specifies T_{TARGET} and the harvest control for each overfished species in Federal regulations, and places the formulas and methodology for determining rebuilding parameters in the FMP. The preferred alternative was chosen because it requires a clear record in the FMP of the rebuilding plan standards that were in place at the start of each rebuilding plan, while also maintaining a current record in Federal regulations of the rebuilding plan parameters that directly govern the setting of annual or biennial harvest levels.

While there will be no direct impact on small entities as a result of adopting any particular process for formulating rebuilding plans, the implementation of specific rebuilding plans for overfished species may entail substantial economic impacts for groundfish processors, commercial harvesters and recreational charter vessels. These type of impacts are specific to particular stocks or species and so will be addressed in the individual rebuilding plans themselves. While there may be slight differences between the alternatives in the amount of administrative capacity required to formulate and implement individual species rebuilding strategies, these differences are not quantifiable and will depend more on the variability of periodic stock assessments once a particular rebuilding plan is adopted than on the effects of these proposed actions or the subsequent adoption of individual rebuilding plans.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries,

Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 19, 2004.

Rebecca Lent,

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

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

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

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

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

■ 2. Section 660.370 is added to read as follows:

§ 660.370 Overfished Species Rebuilding Plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYS, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock.

[FR Doc. 04–4286 Filed 2–25–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 022304C]

Fisheries of the Exclusive Economic Zone Off Alaska; Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 24, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area is 7,553 metric tons (mt) as established by the interim 2004 harvest specifications of groundfish for the GOA (68 FR 67964, December 5, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,433 mt, and is setting aside the remaining 120 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fishery under the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–4265 Filed 2–23–04; 4:23 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 38
Thursday, February 26, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–59–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 and T58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CT58–140–1, CT58–140–2, and T58–GE–5, –10, –100, and –402 series turboshaft engines with certain serial numbers (SNs) of stage 1 compressor disks, part number (P/N) 5001T20P01, installed. This proposed AD would require removing certain stage 1 compressor disks from service before reaching a reduced low-cycle-fatigue (LCF) life limit. This proposed AD results from two reports of low blade tip clearances in the compressor. We are proposing this AD to prevent LCF cracking and failure of the stage 1 compressor disk, an uncontained engine failure, and damage to the helicopter.

DATES: We must receive any comments on this proposed AD by April 26, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–59–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information identified in this proposed AD from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272; fax (513) 552–3329, email *GEAE.csc@ae.ge.com*.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Norman Brown, Senior Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7181; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–59–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language and http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On May 1, 2003, GE informed the FAA that 320 stage 1 compressor disks, P/N 5001T20P01, have high-peak stresses. GE has identified the affected stage 1 compressor disks by SN. An investigation by GE revealed that the tangential positioning of the blade dovetail slot resulted in the high-peak stresses. This proposed AD would require removing those stage 1 compressor disks, PN 5001T20P01, from service before reaching a reduced LCF life limit of 2,100 hours time-since-new (TSN) or by December 31, 2008, whichever occurs first. This condition, if not corrected, could result in LCF cracking and failure of the stage 1 compressor disk, an uncontained engine failure, and damage to the helicopter.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. CT58 S/B 72–A0196, dated July 24, 2003, that describes the procedures for replacing the stage 1 compressor disk.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD which would require removing certain stage 1 compressor disks from service at or before reaching a reduced LCF life limit of 2,100 hours TSN or by December 31, 2008, whichever occurs first.

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

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. 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.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

There are about 320 GE CT58–140–1, CT58–140–2, and T58–GE–5, –10, –100, and –402 series turboshaft engines of

the affected design in the worldwide fleet. We estimate that 45 engines installed on helicopters of U.S. registry would be affected by this proposed AD. The proposed action does not impose any additional labor costs. A new disk would cost about $7,965 per engine. We estimate that the prorated cost of the life reduction would be about $4,181 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $188,172.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–59–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

General Electric Company: Docket No. 2003–NE–59–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 26, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CT58–140–1, CT58–140–2, and T58–GE–5, –10, –100, and –402 series turboshaft engines with stage 1 compressor disks, part number (P/N) 5001T20P01, that have a serial number (SN) listed in the following Table 1:

TABLE 1.—STAGE 1 COMPRESSOR DISK SNS AFFECTED BY THIS AD

GATD0PD2
GATH6RWW
GATH7PR0
GATH86K2
GATH8K0P
GATD0PD3
GATH6T00
GATH7PR1
GATH86K3
GATH8K0R
GATD0PD5
GATH6T01
GATH7PR2
GATH86K4
GATH8K0T
GATD0PD6
GATH6T02
GATH7PR3
GATH86K5
GATH8K0W
GATD0PD7
GATH6T03
GATH7PR4
GATH8A5G
GATH8K12
GATD0PD8
GATH6T04
GATH7PR5
GATH8A5H
GATH8K13
GATD0PD9
GATH6T05
GATH7PR6
GATH8A5J
GATH8K14
GATD0PDA
GATH7K4K
GATH7PR7
GATH8A5K
GATH8K15
GATD0PDC
GATH7K4L
GATH7PR8
GATH8A5L
GATH8K16
GATH53GC
GATH7K4M
GATH7PR9
GATH8A5M
GATH8K17
GATH53GD
GATH7K4N
GATH7PRA
GATH8A5N
GATH8K18

TABLE 1.—STAGE 1 COMPRESSOR DISK SNS AFFECTED BY THIS AD—Continued

GATH53GE
GATH7K4P
GATH7PRC
GATH8A5P
GATH8K19
GATH53GF
GATH7K4R
GATH7PRD
GATH8A5T
GATH8W7H
GATH53GH
GATH7K4T
GATH7PRE
GATH8A5W
GATH8W7J
GATH53GJ
GATH7K5G
GATH7PRF
GATH8A60
GATH8W7L
GATH53GK
GATH7KGH
GATH7PRG
GATH8A61
GATH8W7M
GATH5T70
GATH7KGK
GATH7PRH
GATH8A62
GATH8W7N
GATH5T71
GATH7KGL
GATH7PRJ
GATH8A63
GATH8W7P
GATH5T72
GATH7KGM
GATH7PRK
GATH8A64
GATH8W7R
GATH5T73
GATH7KGN
GATH7PRL
GATH8A66
GATH8W7T
GATH5T74
GATH7KGP
GATH7PRM
GATH8A67
GATH8WD4
GATH5T75
GATH7KGR
GATH7PRN
GATH8A68
GATH8WD5
GATH5T76
GATH7KGT
GATH7PRP
GATH8GRG
GATH8WD6
GATH5T77
GATH7KGW
GATH7PRR
GATH8GRH
GATH8WD7
GATH5T78
GATH7KH0
GATH7PRT
GATH8GRK
GATH8WD8
GATH5T79
GATH7KH1

TABLE 1.—STAGE 1 COMPRESSOR DISK SNs AFFECTED BY THIS AD—Continued

GATH7PRW
GATH8GRL
GATH8WD9
GATH5T7A
GATH7KH2
GATH7PT0
GATH8GRM
GATH8WDA
GATH5T7C
GATH7LAL
GATH7RTP
GATH8GRN
GATH8WDC
GATH5T7D
GATH7LAM
GATH7RTR
GATH8GRP
GATH8WDD
GATH5T7E
GATH7LAN
GATH7RTT
GATH8GRR
GATH8WDE
GATH5T7F
GATH7LAP
GATH82R8
GATH8GRT
GATH8WDF
GATH5T7G
GATH7LAR
GATH82R9
GATH8GRW
GATH8WDG
GATH5T7H
GATH7LAT
GATH82RA
GATH8GT0
GATH8WDH
GATH6CDL
GATH7LAW
GATH82RD
GATH8GT1
GATH8WDJ
GATH6CDM
GATH7LC0
GATH82RE
GATH8GT3
GATH8WDK
GATH6CDN
GATH7LC1
GATH82RF
GATH8GT5
GATH8WDL
GATH6CDP
GATH7LC2
GATH82RG
GATH8GT7
GATH94R3
GATH6CDR
GATH7LC3
GATH82RH
GATH8GT8
GATH94R4
GATH6CDT
GATH7LC4
GATH82RJ
GATH8HGF
GATH94R6
GATH6CE0
GATH7LC5
GATH82RK
GATH8HGG

TABLE 1.—STAGE 1 COMPRESSOR DISK SNs AFFECTED BY THIS AD—Continued

GATH94R7
GATH6CE1
GATH7LC6
GATH82RL
GATH8HGH
GATH94R8
GATH6CE2
GATH7LC7
GATH82RM
GATH8HGJ
GATH94R9
GATH6CE3
GATH7LC8
GATH82RN
GATH8HGK
GATH94RA
GATH6CE4
GATH7M8G
GATH82RP
GATH8HGL
GATH94RC
GATH6CE5
GATH7M8H
GATH82RR
GATH8HGM
GATH94RD
GATH6CE6
GATH7M8J
GATH82RT
GATH8HGN
GATH94RE
GATH6CE7
GATH7M8K
GATH82RW
GATH8HGP
GATH94RF
GATH6CE8
GATH7M8L
GATH82T0
GATH8HGR
GATH94RG
GATH6CE9
GATH7M8M
GATH82T1
GATH8HGT
GATH94RJ
GATH6CEA
GATH7M8N
GATH86JD
GATH8HGW
GATH94RK
GATH6CEC
GATH7MLK
GATH86JE
GATH8HH0
GATH94RN
GATH6CED
GATH7MLL
GATH86JF
GATH8HH1
GATH94RP
GATH6CEE
GATH7MLM
GATH86JG
GATH8HH2
GATH94RR
GATH6CEF
GATH7MLN
GATH86JH
GATH8HH3
GATH94RT
GATH6RH8

TABLE 1.—STAGE 1 COMPRESSOR DISK SNs AFFECTED BY THIS AD—Continued

GATH7MLP
GATH86JJ
GATH8HH4
GATH96HF
GATH6RH9
GATH7MLR
GATH86JK
GATH8HH5
GATH96HG
GATH6RHC
GATH7MLT
GATH86JL
GATH8HH6
GATH96HK
GATH6RHD
GATH7MLW
GATH86JM
GATH8HH7
GATH96HL
GATH6RHE
GATH7MM0
GATH86JN
GATH8K0H
GATH96HM
GATH6RHF
GATH7MM1
GATH86JP
GATH8K0J
GATH96HN
GATH6RHG
GATH7MM2
GATH86JR
GATH8K0K
GATH96HR
GATH6RHH
GATH7MM3
GATH86JT
GATH8K0L
GATH96HT
GATH6RHJ
GATH7PPT
GATH86JW
GATH8K0M
GATH96HW
GATH6RWT
GATH7PPW
GATH86K0
GATH8K0N
GATH96J0

These engines are installed on, but not limited to Agusta S.p.A AS–61N, AS–61N1, Sikorsky S–61L, S–61N, S–61R, and S–61NM helicopters, and the following surplus military helicopters that have been certified in accordance with sections 21.25 or 21.27 of the Federal Aviation Regulations (14 CFR 21.25 or 21.27): Sikorsky S–61D and S–61V, Glacier CH–3E, Siller CH–3E and SH–3A, and Robinson Crane CH–3C, CH–3E, HH–3C, HH–3E, and Carson S–61L helicopters.

Unsafe Condition

(d) This AD results from two reports of low blade tip clearances in the compressor. We are issuing this AD to prevent low-cycle-fatigue (LCF) cracking and failure of the stage 1 compressor disk, an uncontained engine failure, and damage to the helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Replacement of Stage 1 Compressor Disks

(f) If you have a stage 1 compressor disk, P/N 5001T20P01, with a SN listed in Table 1 of this AD, replace that stage 1 compressor disk at or before reaching a reduced LCF life limit of 2,100 hours time-since-new (TSN) or by December 31, 2008, whichever occurs first. GE Alert Service Bulletin (ASB) No. CT58 S/B 72–A0196, dated July 24, 2003, contains information on replacing the stage 1 compressor disk.

(g) After the effective date of this AD, do not install any stage 1 compressor disk, P/N 5001T20P01, that has a SN listed in Table 1 of this AD and has 2,100 hours TSN or more, into any engine.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) None.

Related Information

(j) GE Alert Service Bulletin (ASB) No. CT58 S/B 72–A0196, dated July 24, 2003, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on February 17, 2004.

Francis A. Favara,

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

[FR Doc. 04–4101 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–310–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes. This proposal would require inspection of the metal oxide varistor (MOV) modules and transient absorption zener (TAZ) diodes to determine if those parts are outside of tolerance limits, and replacement of MOV modules and TAZ diodes with new parts, if necessary. This action is necessary to prevent the failure of critical ice protection systems following a lightning strike, which could result in reduced controllability and degraded performance of the airplane in the event of an encounter with icing conditions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 29, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–310–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–310–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 AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; 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–310–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–310–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The metal oxide varistor (MOV) modules protect the propeller deice system from the effects of lightning strikes. The transient absorption zener (TAZ) diodes protect other ice protection functions from the effects of lightning strikes. The LBA advises that 37% of the inspected fleet has been found with TAZ diodes and MOV modules that are out of tolerance. Further investigation revealed that the airplane maintenance manual (AMM) does not include a check of this equipment following a lightning strike. The out of tolerance condition, if not corrected, could result in the failure of critical ice protection systems following a lightning strike, which could result in reduced controllability and degraded performance of the airplane in the event of an encounter with icing conditions.

Explanation of Relevant Service Information

Dornier has issued Service Bulletins SB–328–30–417, dated January 24, 2002 (for Model 328–100 series airplanes), and SB–328J–30–150, dated January 24, 2002 (for Model 328–300 series airplanes). The service bulletins describe procedures for inspection of the MOV modules and TAZ diodes to determine if those parts are out of tolerance, and replacement of any MOV module or TAZ diode with a new part if found out of tolerance. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2002–262 and 2002–263, both dated September 19, 2002, to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 bulletins described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting a test report, this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 48 Model 328–300 series airplanes of U.S. registry would be affected by this proposed AD.

For Model 328–100 airplanes, it would take approximately 6 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $20,670, or $390 per airplane.

For Model 328–300 airplanes, it would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $9,360, or $195 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–310–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3119 inclusive; and Model 328–300 series airplanes, serial numbers 3105 through 3207 inclusive, except serial numbers 3199, 3200, 3203, and 3204; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of critical ice protection systems following a lightning strike, which could result in reduced controllability and degraded performance in the event of an encounter with icing conditions, accomplish the following:

Inspection and Replacement

(a) Within 90 days after the effective date of this AD, inspect transient absorption zener (TAZ) diodes and metal oxide varistor (MOV) modules to determine if those parts are outside of tolerance limits, in accordance with the Accomplishment Instructions of Dornier Service Bulletins SB–328–30–417, dated January 24, 2002 (for Model 328–100 series airplanes); or SB–328J–30–150, dated January 24, 2002 (for Model 328–300 series airplanes); as applicable. If any TAZ diode or MOV module is found to be outside of tolerance, before further flight, replace the faulty part with a new part in accordance with the Accomplishment Instructions of the applicable service bulletin.

Reporting Difference

(b) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in German airworthiness directives 2002–262

and 2002–263, both dated September 19, 2002.

Issued in Renton, Washington, on February 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4255 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 series 800A (including C–29A and U–125 Variant) and 800B Airplanes; and Model Hawker 800 (including U–125A Variant), and 800XP 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 Model BAe.125 series 800A (including C–29A and U–125 Variant) and 800B airplanes; and Model Hawker 800 (including U–125A Variant) and 800XP airplanes. This proposal would require a functional test of the engine fire extinguishing wiring for the appropriate installation; verification of the correct wiring connector installation; correction of wiring if necessary; and installation of new marker bands. This action is necessary to prevent incorrect wiring of the engine fire extinguisher bottles, which could result in one or both fire extinguisher bottles being discharged into the wrong engine nacelle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–216–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. 2003–NM–216–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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Airframe and Propulsion Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4107.

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 2003–NM–216–AD." The postcard will be dated 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. 2003–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received two reports of incorrectly wired engine fire extinguisher bottles on Raytheon Model Hawker 800XP airplanes. Investigation revealed that the wire connectors of the fire extinguisher are neither specifically designed to prevent the wiring from being installed incorrectly nor clearly identified for installation. The configuration allows for potential mis-wiring of the left and right discharge signal of the fire extinguisher from the cockpit to the fire extinguisher bottles during both production and maintenance activities. This condition, if not corrected, could result in one or both fire extinguisher bottles being discharged into the wrong engine nacelle.

The wire connectors of the fire extinguishers on certain Raytheon Model BAe.125 series 800A (including C–29A and U–125 variant) and 800B airplanes and Model Hawker 800 (including U–125 Variant) airplanes are identical to those on the affected Model Hawker 800XP airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin 26–3610, Revision 1, dated September 2003. The service bulletin describes procedures for a functional test of the engine fire extinguishing circuit for the approriate installation; verification of the correct wiring connector installation; correction of wiring if necessary; and installation of new marker bands. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

There are approximately 615 airplanes of the affected design in the worldwide fleet. The FAA estimates that 430 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and the average labor rate is $65 per work hour. Required parts would cost approximately $20 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $64,500, or $150 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also 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:

Raytheon Aircraft Company: Docket 2003–NM–216–AD.

Applicability: Model BAe.125 series 800A (including C–29A and U–125 variant) and 800B airplanes; and Model Hawker 800 (including U–125A variant) and 800XP airplanes; as listed in Raytheon Service Bulletin 26–3610, Revision 1, dated September 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect wiring of the engine fire extinguisher bottles, which could result in one or both fire extinguisher bottles being discharged into the wrong engine nacelle, accomplish the following:

Function Test, Verification, Installation, and Corrective Action

(a) Within 70 flight hours or 30 days after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Raytheon Service Bulletin 26–3610, Revision 1, dated September 2003.

(1) Perform a functional test of the engine fire extinguishing wiring for appropriate installation, and verify the correct wiring connector installation. If any connector is wired incorrectly, prior to further flight, correct the wiring.

(2) Install the new marker bands.

Exception to Service Bulletin

(b) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on February 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4256 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that currently requires repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves if leaks are detected. This action would require new repetitive engine operational tests. This action would also require replacement of the motive flow check valves with new parts, which would constitute terminating action for the repetitive inspections and engine operational tests. The actions specified by the proposed AD are intended to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources and consequent fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 29 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–156-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–156–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 AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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–156–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–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 23, 2001, the FAA issued AD 2001–09–04, amendment 39–12209 (66 FR 21276, April 30, 2001), applicable to certain Dornier Model 328–300 series airplanes, to require repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves if leaks are detected. That action was prompted by reports of cracks on the motive flow check valves, which resulted in fuel leaks. The requirements of that AD are intended to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources.

Actions Since Issuance of Previous Rule

The preamble to AD 2001–09–04 explains that we considered the requirements "interim action" until a final action was identified, at which time we may consider further rulemaking. The manufacturer has developed a final action, replacement of the motive flow check valves with new check valves, and we have determined that further rulemaking is necessary. This proposed AD follows from that determination.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328J–28–047, dated May 18, 2001, which describes procedures for replacement of the existing check valve having part number (P/N) 106–0007–01 with a new check valve having P/N 106–0007–02. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified this service bulletin as mandatory and issued German airworthiness directive 2001–058/2, dated June 27, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany 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 LBA has kept us informed of the situation described above. We have examined the findings of the LBA, 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 AD

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 supersede AD 2001–09–04 to continue to require repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves if leaks are detected. The proposed AD also would require repetitive engine operational tests and eventual replacement of the motive flow check valves with new parts having a different part number. Replacement of the parts would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Clarification of Compliance Time

The service bulletin and the German airworthiness directive recommend accomplishing the part replacement "at the next suitable planned maintenance." Because maintenance schedules vary among operators, this proposed AD would require accomplishment of the part replacement within 12 months after the effective date of this AD.

Explanation of Repetitive Test Requirement

This proposed AD includes a requirement for repetitive engine operational tests. The repetitive tests begin after a new motive flow fuel valve installed on the airplane has accumulated 800 flight cycles. This

requirement was inadvertently omitted from AD 2001–09–04.

Cost Impact

There are approximately 28 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive inspections that are currently required by AD 2001–09–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,820, or $65 per airplane, per inspection cycle.

The new actions that are proposed in this AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $7,280, or $260 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or 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.

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 removing amendment 39–12209 (66 FR 21276, April 30, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Fairchild Dornier GmbH (formerly Dornier Luftfahrt GmbH): Docket 2002–NM–156–AD. Supersedes AD 2001–09–04, Amendment 39–12209.

Applicability: Model 328–300 series airplanes, certificated in any category, equipped with a motive flow check valve having part number (P/N) 106–0007–01.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources and consequent fuel tank explosion and fire, accomplish the following:

Restatement of Requirements of AD 2001–09–04

Initial Inspection

(a) Prior to the accumulation of 800 total flight cycles on the motive flow check valve P/N 106–0007–01, or within 3 days after May 15, 2001 (the effective date of AD 2001–09–04, amendment 39–12209), whichever occurs later: Perform a general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube to detect fuel droplets or fuel staining, in accordance with paragraph 2.B of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000. If any fuel droplet or fuel staining is detected, prior to further flight, perform an additional inspection and operational test, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

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 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."

Repetitive Inspections

(b) Within 15 days or 60 flight hours after May 15, 2001, whichever occurs first: Perform a general visual inspection of the motive flow check valve to detect fuel leaks, in accordance with paragraph 2.C of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leak is detected, repeat the general visual inspection of the motive flow check valve at least every 15 days or 60 flight hours, whichever occurs first, until paragraph (b)(2) or paragraph (e) of this AD is accomplished.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (b) of this AD, including the repetitive inspection, at least every 15 days or 60 flight hours, whichever occurs first, until paragraph (e) of this AD is accomplished.

(c) Within 400 flight hours after May 15, 2001: Perform an engine operational test and a general visual inspection of the motive flow check valve to detect a fuel leak, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leak is detected, repeat the engine operational test and the general visual inspection of the motive flow check valve at least every 400 flight hours, until paragraph (c)(2) or paragraph (e) of this AD is accomplished.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (c) of this AD, including the repetitive inspections, at least every 400 flight hours.

New Requirements of This AD

Repetitive Tests

(d) If any motive flow fuel valve is replaced per the requirements of paragraph (c)(2) of this AD: At the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD, do the engine operational test required by paragraph (c) of this AD. Thereafter, repeat the engine operational test at intervals not to exceed 400 flight hours, until paragraph (e) of this AD is accomplished.

(1) Within 800 flight cycles after the replacement of any motive flow fuel valve.

(2) Within 30 days or 90 flight hours after the effective date of this AD, whichever is first.

Terminating Action for Repetitive Inspections and Tests

(e) Within 12 months after the effective date of this AD: Remove any motive flow check valve having P/N 106–0007–01 and replace it with a motive flow check valve having P/N 106–0007–02 in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–28–047, dated May 18, 2001. Accomplishment of the replacement is terminating action for the repetitive inspections and engine operational tests required by paragraphs (b), (c) and (d) of this AD.

Parts Installation

(f) As of the effective date of this AD, no person may install a motive flow check valve, P/N 106–0007–01, on any airplane.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in German airworthiness directive 2001–058/2, dated June 27, 2002.

Issued in Renton, Washington, on February 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4257 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15976; Airspace Docket No. 03–AWA–5]

RIN 2120–AA66

Proposed Establishment of Prohibited Area P–50; Kings Bay, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a prohibited area over the U.S. Naval Submarine Base, Kings Bay, GA. The proposed prohibited area would replace a Temporary Flight Restriction (TFR) that is currently in effect. The new prohibited area would be named P–50, Kings Bay, GA. The FAA is proposing this action to enhance the security of the Naval Submarine Base, at Kings Bay, GA.

DATES: Comments must be received on or before April 12, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers FAA–2003–15976/Airspace Docket No. 03–AWA–5 at the beginning of your comments. You may also submit comments through the Internet to *http://dms.dot.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–15976 and Airspace Docket No. 03–AWA–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

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–2003–15976/Airspace Docket No. 03–AWA–5." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Lt. Len Schilling, Naval Submarine Base, Kings Bay, FEA, Building 2015, 1063 USS Tennessee Ave, Kings Bay, GA 31547; Telephone: 912–673–2001, ext. 4611.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/nara*.

You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Discussion/Background

On September 11, 2001, the United States (U.S.) suffered catastrophic terrorist attacks involving four hijacked U.S. commercial aircraft. In response to these attacks, the FAA took action to temporarily shut down the National Airspace System, except for certain military, law enforcement, and emergency aircraft flight operations. Additionally, to hinder the potential for further airborne attacks and to specifically respond to security concerns, the FAA issued numerous TFRs, via the U.S. Notice to Airmen (NOTAM) System, to limit or prohibit aircraft flight operations in the vicinity of critical military, government, and national infrastructure locations across the country. One such location was the U.S. Naval Submarine Base at Kings Bay, GA. Beginning on September 13, 2001, the FAA issued a series of TFRs to prohibit aircraft flight operations in the vicinity of the Kings Bay base. The first NOTAM, 1/9866, prohibited aircraft operations at and below 10,000 feet above ground level (AGL) within a 10-nautical-mile (NM) radius of the base. The dimensions of this TFR encompassed the St. Marys Airport (4J6), St. Marys, GA, resulting in the temporary closure of the airport.

NOTAM 1/9866 was replaced on September 14, 2001, by NOTAM 1/9948 that amended the TFR by reducing the restriction to that airspace at and below 5,000 feet AGL within a 5-NM radius of the base. On September 17, 2001, NOTAM 1/9948 was replaced by NOTAM 1/0063. NOTAM 1/0063 did not alter the dimensions of the TFR, but changed the facility in charge from the Kings Bay Naval Base, to the FAA, Jacksonville Terminal Radar Approach Control (TRACON). This NOTAM remained in effect until September 19, 2001, when NOTAM 1/0189 was issued. NOTAM 1/0189 retained the 5-NM radius, but amended the upper altitude of the TFR from 5,000 feet MSL to 4,999 feet MSL. The 5-NM radius of these latter three TFRs continued to prevent aircraft operations at the St. Marys Airport. On December 3, 2001, the FAA issued NOTAM 1/2887 which further amended the TFR by reducing its dimensions to that airspace within a 2-NM radius of a point on the base, from the surface up to but not including 3,000 feet MSL. This change removed the St. Marys Airport from the TFR airspace and enabled aircraft operations to resume at the airport. On December 1, 2003, the FAA cancelled NOTAM 1/2887 and issued NOTAM 3/1400 as a replacement. NOTAM 3/1400 was identical to 1/2887 except that the navigation aid reference was changed from the Craig, FL, VORTAC to the Brunswick, GA, VORTAC. NOTAM 3/1400 remains in effect as of the date of this notice.

U.S. Navy Request

Due to the current world situation and continued security concerns at this facility, the U.S. Navy has requested that the FAA designate a prohibited area at Kings Bay, GA, to enhance Navy security efforts at the base. This proposal responds to that request.

Statutory Authority

The FAA Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103(a)). The Administrator is also authorized to issue air traffic rules and regulations to govern the flight of aircraft, the navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace. Additionally, pursuant to 49 U.S.C. section 40103(b)(3) the Administrator has the authority, in consultation with the Secretary of Defense, to "establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security." Such provisions may include establishing airspace areas the Administrator decides are necessary in the interest of national defense; and by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with available facilities in those areas.

The Proposal

In response to the U.S. Navy request, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to designate a prohibited area over the U.S. Naval Submarine Base, Kings Bay, GA. The proposed prohibited area, designated P–50, would consist of that airspace, from the surface to but not including 3,000 feet MSL, within a 2–NM radius of lat. 30°48′00″ N., long. 81°31′00″ W. In accordance with 14 CFR 73.83, no person may operate an aircraft within a prohibited area unless authorization has been granted by the using agency. The proposed prohibited area dimensions are identical to those contained in the TFR now in effect over the Kings Bay base. If implemented, Prohibited Area P–50 would replace the TFR at Kings Bay, GA, currently contained in NOTAM number 3/1400.

Prohibited areas in 14 CFR part 73 are republished in subpart C of FAA Order 7400.8L, dated September 2, 2003, and effective September 16, 2003. The prohibited area listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

* * * * *

§ 73.92 [New]

2. § 73.92 is added as follows:

* * * * *

P–50 Kings Bay, GA [New]

Boundaries: That airspace within a 2–NM radius of lat. 30°48′00″ N., long. 81°31′00″ W.

Designated altitudes: Surface to but not including 3,000 feet MSL.

Time of designation: Continuous.

Using agency: Administrator, FAA, Washington, DC.

* * * * *

Issued in Washington, DC on February 18, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 04–4290 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110896–98]

RIN 1545–AW35

Charitable Remainder Trusts; Application of Ordering Rule; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public

hearing on the ordering of rules of section 664(b) for characterizing distributions from charitable remainder trusts.

DATES: The public hearing originally scheduled for March 9, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, November 20, 2003 (68 FR 65419), announced that a public hearing was scheduled for March 9, 2004, at 10 a.m., in the auditorium. The subject of the public hearing is proposed regulations under section 664 of the Internal Revenue Code. The public comment period for these regulations expired on February 17, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, February 18, 2004, no one has requested to speak. Therefore, the public hearing scheduled for March 9, 2004, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–4289 Filed 2–25–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–166012–02]

RIN 1545–BB82

National Principal Contracts; Contingent Nonperiodic Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC). This document also provides guidance relating to the character of payments made pursuant to an NPC. These regulations will affect taxpayers that enter into NPCs. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronically transmitted comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for May 25, 2004, at 10 a.m., must be received by May 4, 2004. Comments on the collection of information should be received by April 26, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–166012–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–166012–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180; concerning the regulations, Kate Sleeth, (202) 622–3920 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 26, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.446–3(g)(6)(vii). This information is required by the IRS to verify compliance with section 446 and the method of accounting described in § 1.446–3(g)(6). This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount of income or deduction to be taken into account. The respondents are sophisticated investors that enter into notional principal contracts with contingent nonperiodic payments.

Estimated total annual recordkeeping burden: 25,500 hours.

Estimated average annual burden per recordkeeper: 6 hours.

Estimated number of recordkeepers: 4,250.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR Part 1 under section 446(b) of the Internal Revenue Code (Code). This document also contains proposed amendments under sections 162, 212 and 1234A of the Code.

In 1989, the IRS issued Notice 89–21 (1989–1 C.B. 651), to provide guidance with respect to the tax treatment of lump-sum payments received in connection with NPCs. The Notice stated that a method of accounting that properly recognizes a lump-sum payment over the life of the contract

clearly reflects income and indicated that regulations would be issued to provide specific rules regarding the manner in which a taxpayer must take into account over the life of an NPC payments made or received with respect to the contract. The Notice further stated that "for contracts entered into prior to the effective date of the regulations, the Commissioner will generally treat a method of accounting as clearly reflecting income if it takes such payments into account over the life of the contract under a reasonable amortization method, whether or not the method satisfies the specific rules in the forthcoming regulations." (1989–1 C.B. 652).

On October 14, 1993, the IRS published in the **Federal Register** final regulations (TD 8491; 1993–2 C.B. 215 [58 FR 53125]) under section 446(b) relating to the timing of income and deductions for amounts paid or received pursuant to NPCs. § 1.446–3. In this preamble, the final regulations published in 1993 are referred to as the 1993 Treasury regulations.

The 1993 Treasury regulations define an NPC as a "financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts." § 1.446–3(c)(1)(i). Payments made pursuant to NPCs are divided into three categories (periodic, nonperiodic, and termination payments), and the 1993 Treasury regulations provide timing regimes for each. The 1993 Treasury regulations require all taxpayers, regardless of their method of accounting, to recognize the ratable daily portion of a nonperiodic payment for the taxable year to which that portion relates. Nonperiodic payments generally must be recognized over the term of an NPC in a manner that reflects the economic substance of the contract. § 1.446–3(f)(2)(i). Although § 1.446–3 does not distinguish between noncontingent and contingent nonperiodic payments, the specific rules and examples in the 1993 Treasury regulations address only noncontingent nonperiodic payments. The Preamble to the 1993 Treasury regulations states that "the IRS expects to address contingent payments in future regulations, and welcomes comment on the treatment of those payments." (1993–2 C.B. 216). In addition, neither § 1.446–3 nor any other section provides specific rules governing the character of the various types of NPC payments.

On July 23, 2001, the IRS published Notice 2001–44 (2001–2 C.B. 77), soliciting comments on the appropriate method for the inclusion or deduction of contingent nonperiodic payments made pursuant to NPCs and the proper character treatment of payments made pursuant to an NPC. The Notice set forth four different methods under consideration by the IRS and Treasury and asked the public to comment on the extent to which each method reflects certain fundamental tax policy principles, including certainty, clarity, administrability, and neutrality. Several comments were received from the public, which expressed diverse views regarding the relative advantages and disadvantages of the different methods. Included in the four methods were the noncontingent swap method and a mark-to-market method, versions of which are adopted in the proposed regulations.

The Notice also solicited comments on the proper character of payments on NPCs and bullet swaps. The comments received on this issue also reflected differing views.

Explanation of Provisions

A. Overview

The IRS and Treasury understand that some taxpayers take into account contingent nonperiodic payments on an NPC only when the payment becomes fixed and determinable (the open transaction or wait-and-see method of accounting). The wait-and-see method, however, is inconsistent with the existing specific timing rules for periodic and nonperiodic payments and with the general rule in § 1.446–3(f)(2)(i) respecting recognition of nonperiodic payments over the term of the contract. For example, if the amount of a periodic payment is set in arrears at the end of an accrual period that spans taxable years, the parties cannot use a wait-and-see method for the portion of the accrual period in the first taxable year. Instead, the parties must use a reasonable estimate of the payment for determining taxable income in the year before the payment is fixed. § 1.446–3(e)(2)(ii). In addition, some NPCs are structured to provide for nonperiodic payments consisting of a noncontingent component and a contingent component, which the parties to the contract treat as a single contingent payment that they account for under the wait-and-see method. The attempted application of the wait-and-see method to these contracts highlights the potential for abuse present in the method. *See* Rev. Rul. 2002–30 (2002–1 C.B. 971).

The back-loaded timing of tax consequences that results from the wait-and-see method is also inconsistent with the timing regime that § 1.1275–4(b) provides for contingent debt instruments subject to the noncontingent bond method. Under the noncontingent bond method, the parties to a contingent payment debt instrument must determine the yield at which a comparable noncontingent debt instrument would be issued and then project a fixed amount for each contingent payment and each noncontingent payment. The projected amounts are accounted for over the term of the debt instrument. The difference, if any, between the projected amount of a contingent payment and the actual amount of the payment generally is accounted for when payment is made.

The proposed regulations adopt a variation on the noncontingent swap regime described in Notice 2001–44, as well as an elective mark-to-market regime. The 1993 Treasury regulations reflect an underlying principle that nonperiodic payments should be spread over the term of an NPC in a manner that properly reflects the economic substance of the contract. The proposed regulations build upon this principle. Furthermore, the IRS and Treasury believe that the proposed regulations provide a timing regime for contingent nonperiodic payments that clearly reflects the economics of the underlying contracts. The requirement that nonperiodic payments be spread over the term of an NPC results in substantially similar treatment for all NPCs without regard to whether payment obligations are settled on a current basis through periodic payments or are either pre-paid or deferred through nonperiodic payments. Adopting this approach for contingent payment NPCs achieves symmetry between fixed payment NPCs and contingent payment NPCs.

The proposed noncontingent swap method requires taxpayers to project the expected amount of contingent payments, to take into account annually the appropriate portions of the projected contingent amounts, to reproject the contingent amounts annually, and to reflect the differences between projected amounts and reprojected amounts through adjustments. The IRS and Treasury recognize that annual reprojections will require additional effort by taxpayers and the IRS. The IRS and Treasury believe, however, that the annual reprojection requirement is essential to ensure clear reflection of income with respect to NPCs with one or more contingent nonperiodic payments. Moreover, reprojections, and the resulting adjustments to current inclusion and deduction amounts, are

especially important for the income and deductions generated by these types of contracts because otherwise taxpayers might be more likely to attempt to manipulate the character of the income or deductions from the contract.

In developing the proposed regulations, the IRS and Treasury have taken into account comments received in response to Notice 2001–44, as well as the following considerations. First, although many comments advocated the wait-and-see method of accounting for contingent nonperiodic payments, this method encourages the creation of NPCs that provide such payments. As a result of the adoption of guidelines for taking contingent nonperiodic payments into account over the term of an NPC, the tax treatment of payments with respect to an NPC should no longer provide an incentive for structuring payments in a particular manner. Second, taxpayers using swaps with contingent nonperiodic payments are sophisticated investors. Many of these taxpayers will be making similar projections and reprojections for their own purposes in evaluating the results of their derivative investments and taking actions to manage the risks created by their derivative investments. Third, the proposed regulations also provide an elective mark-to-market method as an alternative to the noncontingent swap method. Taxpayers who use a mark-to-market method for financial reporting purposes may adopt the elective mark-to-market method to reduce their tax and accounting administrative burden for NPCs.

The IRS and Treasury understand that similar timing issues exist for other types of derivative investments, like bullet swaps and prepaid forward contracts. Although the application of the proposed regulations to these types of transactions may achieve appropriate timing, the application of these rules to investments other than NPCs could present a number of issues not directly addressed by the rules contained in these proposed regulations. The expansion of the scope of these proposed regulations to contracts other than NPCs is not being proposed at this time so as not to delay the publication of the proposed regulations.

With respect to character, the proposed regulations under sections 162 and 212 provide that both periodic and nonperiodic payments with respect to NPCs are generally ordinary in character. This is because neither periodic nor nonperiodic payments (whenever made) involve a sale or exchange within the meaning of section 1222, and no other section of the Code provides otherwise. The proposed regulations issued under section 1234A provide capital treatment for termination payments. Under the proposed regulations, however, even nonperiodic payments made at the maturity of an NPC are not termination payments under section 1234A.

Because of their recurring nature, periodic payments should be treated as ordinary income items, whether or not the payments are made at the expiration of an NPC. The same rationale applies to nonperiodic payments, which are required to be spread over the term of an NPC. Even if a nonperiodic payment is made at the expiration or termination of an NPC, only the final portion is taken into account on the termination date for the contract, and that portion should be treated in the same way as a periodic payment.

B. Specific Provisions

Adjustments

Paragraph (d)(2) of the proposed regulations provides for adjustments to be made in the gain or loss realized on the sale, exchange, or termination of an NPC, to account for inclusions into income and deductions provided for in the 1993 Treasury regulations and the proposed regulations, as well as for any payments made or received on the NPC. These adjustments are expected to produce consequences similar to the consequences that would result if basis were increased or decreased for these items. Using adjustments for this purpose avoids the issue of negative basis.

Significant Nonperiodic Payments

Paragraph (g)(4) of the proposed regulations clarifies the rules for the treatment of an NPC with a significant upfront nonperiodic payment and provides additional rules for the treatment of a significant nonperiodic payment that is not paid upfront. The 1993 Treasury regulations provide that a significant nonperiodic payment on an NPC is treated as two separate transactions—an on-market level payment NPC and a loan. § 1.446–3(g)(4). The proposed regulations clarify that the parties to an NPC with one or more significant nonperiodic payments must treat the contract as two or more separate transactions consisting of an on-market NPC and one or more loans. In some cases, the on-market NPC payments for a party making a significant nonperiodic upfront payment will be level payments that may be constructed through a combination of the actual payments on the NPC and level payments computed under the level payment method described in § 1.446–3(f)(2)(iii)(A).

The proposed regulations also provide that an NPC with a significant nonperiodic payment that is not paid upfront is treated as if the party receiving the significant nonperiodic payment paid a series of annual level payment loan advances, equal to the present value of the nonperiodic payment, to the party owing the significant nonperiodic payment. The interest component of the level payments is treated as interest for all purposes of the Code and is not taken into account in determining the income and deductions on the NPC. The principal component of the level payments is calculated solely to determine the interest amount. The party owing the significant nonperiodic payment is then treated as using the level payment loan advances to make annual level payment NPC payments, which are included in income and deducted as provided in § 1.446–3(d).

Contingent Nonperiodic Payments

The 1993 Treasury regulations define both periodic and nonperiodic payments but do not distinguish between contingent and noncontingent nonperiodic payments. Paragraph (g)(6)(i)(B) of the proposed regulations defines a contingent nonperiodic payment as any nonperiodic payment other than a noncontingent nonperiodic payment. A noncontingent nonperiodic payment is defined in paragraph (g)(6)(i)(A) of the proposed regulations as a nonperiodic payment that either is fixed on or before the end of the taxable year in which a contract commences or is equal to the sum of amounts that would be periodic payments if they are paid when they become fixed, including amounts determined as interest accruals.

Paragraph (g)(6)(ii) of the proposed regulations sets forth the noncontingent swap method for the inclusion into income and deduction of contingent nonperiodic payments. The noncontingent swap method requires taxpayers to project the reasonably expected amount of the contingent nonperiodic payment and to apply the level payment method and, as appropriate, the rules for significant nonperiodic payments, to the projected amount as if it were a noncontingent nonperiodic payment. The risk-free rate of return, which is defined in the proposed regulations, is used in applying the level payment method.

Paragraphs (g)(6)(iii)(A) through (C) of the proposed regulations provide the methods for projecting the reasonably expected amount. If the contingent

payment is determined by reference to the value of a specified index at a designated future date, the projected amount may be determined by reference to the future value of the specified index in actively traded futures or forward contracts providing for delivery or settlement on the designated future date. If no actively traded contract exists for the designated future date, the value may be derived from actively traded futures or forward contracts providing for delivery or settlement within three months of the designated future date.

The projected amount may also be determined based on the projected future value of the current market price of the specified index. The future value is determined using a constant yield method at the risk-free interest rate with appropriate compounding and making appropriate adjustments for expected cash payments on the property underlying the specified index. The proposed regulations use the applicable federal rate under section 1274(d)(1) as the risk-free rate for this purpose. Comments are requested on whether this rate is appropriate.

If neither of the two methods described above results in a reasonable estimate of the future value of the specified index, the taxpayer must use another method that does result in a reasonable estimate of the amount of the contingent payment and that is based on objective financial information, and must consistently use the method from year to year.

The proposed regulations require annual adjustments to the projected amounts of the contingent payment. Paragraphs (g)(6)(iv) through (vi) of the proposed regulations provide rules for the redetermination of the projected amount of the contingent payment and the subsequent adjustments to the recognition of income and deductions under a contract based on the reprojected amount.

Paragraph (g)(6)(iv) of the proposed regulations provides that the projected amount must be redetermined on each successive anniversary date (redetermination date) and on each special redetermination date as described below. On each redetermination date, the taxpayer must reproject the amount of the contingent payment using the same method used at the commencement of the NPC but applied to the new current value of the specified index. Once the contingent payment is reprojected, the level payment method (and the rules for significant nonperiodic payments, if applicable) are applied again using the new projected amount.

Comments are requested as to how the reprojection process should respond to changes in the availability of market data during the life of an NPC. Suppose, for example, that the initial projection is made when there are no actively traded futures or forward contracts in the specified index but that these contracts come into existence before the time of one of the reprojections. Should the reprojections be made using the newly available futures data rather than the method employed for the first projection?

Paragraph (g)(6)(v) of the proposed regulations provides rules for adjustments following the redetermination of the projected amount of the contingent payment. The amounts determined for the redetermined projected amount under the level payment method and, as applicable, the rules for significant nonperiodic payments, are recognized in the current and subsequent taxable years. In addition, any difference between the newly determined amounts for prior periods and the amounts determined and previously taken into account using the previously projected contingent payment are recognized ratably over the one-year period beginning with the redetermination date. Any difference in amounts that would have been treated as interest under the rules for significant nonperiodic payments is also treated as interest for all purposes of the Code.

Paragraph (g)(6)(iv)(B) of the proposed regulations provides a special rule for a contingent nonperiodic payment that is fixed more than six months before it is due. If the date on which the payment becomes fixed is in a different taxable year from the date it is due, the date on which the payment becomes fixed is a special redetermination date. In such a case, the fixed amount is treated as the reprojected amount, and the rules described above for redeterminations and adjustments apply.

In general, under paragraph (g)(6)(vi) of the proposed regulations, when a contingent payment is made, the parties must make appropriate adjustments to the amount of income or deduction attributable to the NPC for any differences between the projected amount of the contingent payment and the actual amount of the contingent payment.

Paragraph (g)(6)(vii) of the proposed regulations provides a recordkeeping requirement with respect to the noncontingent swap method. Taxpayers must maintain in their books and records a description of the method used to determine the projected amount of the contingent payment, the projected payment schedules, and the adjustments taken into account under the proposed regulations.

The IRS and Treasury are considering whether to provide an alternative to the noncontingent swap method that would permit a taxpayer to use a current inclusion method for certain NPCs that provide for periodic calculations of amounts due under the terms of the NPC, but provide for deferred payment of the amounts. The IRS and Treasury are considering permitting current inclusion of income and deduction for the amounts so calculated, provided the NPC also provides for accrual of interest at a qualified rate until the periodically determined amounts are paid or offset against other amounts due under the NPC. The purpose of providing a current inclusion method for the deferred payment NPC described above is to provide tax treatment for NPCs with contingent nonperiodic payments that is economically equivalent to the tax treatment of NPCs providing only for periodic payments while avoiding the necessity of using projected amounts for contingent payments. The IRS and Treasury request comments concerning whether an NPC like the deferred payment NPC described above would be a viable transaction for market participants, whether a current inclusion method would be an appropriate substitute for the noncontingent swap method for deferred payment NPCs, and whether that method should require separate computation of interest accruals.

Elective Mark-to-Market Methodology

Paragraph (i) of the proposed regulations provides an elective mark-to-market methodology for certain NPCs providing for nonperiodic payments. If an election is made, the specific accounting rules for nonperiodic payments in § 1.446–3(f)(2) (other than (f)(2)(i)) are not applicable. Instead, for any contract that is held at the close of the taxable year, the taxpayer determines income inclusions and deductions by reference to the gain or loss that would be realized if the contract were sold for its fair market value on the last business day of the taxable year. Because the determination of fair market value takes into account the expected value of future nonperiodic payments, the mark-to-market methodology constitutes a reasonable basis for amortizing the nonperiodic payments over the term of the contract as required by § 1.446–3(f)(2)(i).

Proper adjustments are made in the amount of gain or loss subsequently realized (or calculated) for income inclusions and deductions taken into

account in marking the contract to fair market value. Furthermore, under paragraph (i)(5) of the proposed regulations, if an election is made for a contract providing for a significant non periodic payment, paragraph (g)(4) continues to apply and proper adjustments must be made to the income inclusions and deductions recognized under the mark-to-market methodology to take into account amounts recognized as interest and the payment or receipt of the significant nonperiodic payment, subject to the special rule set forth below.

The proposed regulations set forth a special rule for contracts providing for significant contingent nonperiodic payments that are subject to the mark-to-market election. If a contract provides for a significant contingent nonperiodic payment, the taxpayer must apply the noncontingent swap method to determine the amounts recognized as interest under paragraph (g)(4). However, the taxpayer is not required to reproject the amount of the contingent payment each year. The interest amounts for subsequent years are the interest amounts as determined using the initial projection of the contingent payment. Furthermore, an alternative deemed equivalent value method may be used to determine the projected amount of the contingent payment. The deemed equivalent value method may be applied when the contract fixes the timing and amount of all of the payments under the contract, except for the significant contingent nonperiodic payment. The amount of the significant contingent nonperiodic payment is deemed to be the amount that causes the present value of all the payments by the taxpayer to equal the present value of all of the payments of the counterparty to the contract.

The inclusion of an elective mark-to-market methodology is intended to provide taxpayers with an alternative to the provisions of paragraphs (f) of the 1993 Treasury regulations and (g)(6) of the proposed regulations respecting nonperiodic payments. With respect to significant nonperiodic payments, however, the proposed regulations preserve certain features of those provisions for purposes of computing an interest component of swap payments. Such a calculation is necessary to preserve the characterization of an accrual as interest. The IRS and Treasury request comments on the appropriateness of requiring taxpayers to compute an interest amount for significant nonperiodic payments under the elective mark-to-market methodology and, in particular, on any effect that requirement may have on the relative usefulness and administrability of the mark-to-market methodology.

Paragraph (i)(2) of the proposed regulations provides the scope of the election. The election is available to contracts that are: (1) Actively traded within the meaning of § 1.1092(d)–1(c) (determined without regard to the limitation in § 1.1092(d)–1(c)(2)); (2) marked to market for purposes of the taxpayer's financial statements provided the taxpayer satisfies the requirements in paragraph (i)(4) of the proposed regulations; (3) subject to an agreement by a party to the contract that is a person to whom section 475 applies to supply to the taxpayer the value that it uses in applying section 475(a)(2); or (4) marked to market by a regulated investment company (RIC) described in section 1296(e)(2). Paragraphs (i)(3) (i) through (iv) of the proposed regulations provide the acceptable methods for determining fair market value. If the contract is actively traded, the fair market value is determined based on the mean between the bid and asked prices quoted for the contract. If a contract is not actively traded, but is marked to market for financial statement purposes, and the valuations used for those purposes comply with the requirements of paragraph (i)(4), the fair market value is deemed to be the value used for the financial statements. For a contract that is subject to an agreement with a dealer in securities to provide a value, the value that is provided by the dealer is the fair market value. Finally, for a contract marked to market by a RIC, the fair market value is equal to the value used for purposes of determining the RIC's net asset value.

Paragraph (i)(6) of the proposed regulations provides that the mark-to-market election shall be made in the time and manner prescribed by the Commissioner and is effective for the taxable year in which it is made and all subsequent years unless revoked with the consent of the Commissioner.

The proposed regulations indicate that a taxpayer will be permitted to elect the mark-to-market method for NPCs that are marked to market for purposes of the taxpayer's financial statements and that the values used on the financial statements may be used as fair market value under the mark-to-market election. However, the proposed regulations also indicate that an election to use financial statement values will be subject to further requirements. On May 5, 2003, the IRS and Treasury published in the **Federal Register** an Advance Notice of Proposed Rule Making (REG–100420–03) requesting comments regarding appropriate rules for the use of financial statement values under the mark-to-market provisions of section 475 applicable to securities dealers and electing commodities dealers and securities and commodities traders. The IRS and Treasury will take into account the comments received in response to that Advance Notice in developing the rules to be established for use of financial statement values under the mark-to-market method set forth in paragraph (i) of the proposed regulations. In addition, unlike other mark-to-market regimes, the mark-to-market method proposed in paragraph (i) does not require a mark immediately before disposition in either a recognition or nonrecognition context. *Cf.* section 1256(c) and proposed regulations § 1.475(a)–2. The IRS and Treasury request comments regarding this aspect of the proposed regulations and whether taxpayers who are eligible to elect a mark-to-market method under section 475 but do not do so should be eligible to make the paragraph (i) election for NPCs.

Anti-abuse Rule

Paragraph (i) of the 1993 Treasury regulations provides that if a taxpayer "enters into a transaction with a principal purpose of applying the rules of [§ 1.446–3] to produce a material distortion of income," the IRS may depart from those rules "as necessary to reflect the appropriate timing of income and deductions from the transaction." In light of the comprehensive rules in the proposed regulations prescribing methods of accounting for NPCs, the IRS and Treasury have determined that a general anti-abuse rule is not necessary to prevent these methods being used in a manner that fails to clearly reflect income. Accordingly, the proposed regulations delete this rule.

Proposed Dates of Applicability

These proposed regulations contain both new substantive rules as well as clarifying changes to the 1993 Treasury regulations. The new substantive rules, which are contained in paragraph (g)(6) (the noncontingent swap method) (except (g)(6)(i)) and paragraph (i) (the mark-to-market election), are proposed to apply to NPCs entered into on or after 30 days after the date of publication of the final regulations in the **Federal Register.** Paragraphs (c) (definitions), (d) (taxable year of inclusion and deduction), (f) (nonperiodic payments), (g)(4) (significant nonperiodic payments), and (g)(6)(i) (definition of contingent and noncontingent nonperiodic payments) are proposed to be integrated into the 1993 Treasury regulations which apply to NPCs entered into on or after December 13,

1993. Because of their purely clarifying nature, these proposed changes will apply to the same transactions that are governed by the 1993 Treasury regulations.

With respect to NPCs that provide for contingent nonperiodic payments and that are in effect or entered into on or after 30 days after the date of publication of these proposed regulations in the **Federal Register**, if a taxpayer has not adopted a method of accounting for these NPCs, the taxpayer must adopt a method that takes contingent nonperiodic payments into account over the life of the contract under a reasonable amortization method, which may be, but need not be, a method that satisfies the specific rules in these proposed regulations. If a taxpayer has adopted a method of accounting for these NPCs, the Commissioner generally will not require a change in the accounting method earlier than the first year ending on or after 30 days after the date of publication of the final regulations in the **Federal Register.** The preceding sentence does not apply to transactions described in Rev. Rul. 2002–30 (2002–1 C.B. 971) or other published guidance.

The proposed regulations do not contain a specific consistency requirement. Nevertheless, under the general rules governing accounting methods, once a taxpayer adopts a method of accounting for an item, the taxpayer must use the same method from year to year unless the taxpayer obtains the Commissioner's consent to change to another method of accounting.

Character

The proposed regulations under § 1.162–30 provide that in general, the net periodic and nonperiodic payments (including mark-to-market deductions) are deductible by the payor under section 162 as ordinary and necessary business expenses. However, payments representing interest under the rules for significant nonperiodic payments as well as termination payments are not deductible under section 162. A similar rule is provided for individuals in the proposed regulations under § 1.212–1(q). These regulations under sections 162 and 212 are proposed to apply to NPCs entered into on or after 30 days after the date of publication of the final regulations in the **Federal Register.**

Any gain or loss arising from a termination payment, however, is treated as capital gain or loss pursuant to the proposed regulations under section 1234A. These proposed regulations clarify that periodic payments, noncontingent nonperiodic payments, and contingent nonperiodic payments are not termination payments.

The proposed regulations under section 1234A also apply to any gain or loss arising from the settlement of obligations under a bullet swap or forward contract. A payment in settlement of obligations under a bullet swap or forward contract, including a payment pursuant to the terms of the bullet swap or forward contract, is treated as gain or loss from a termination of the bullet swap or forward contract.

For purposes of these proposed regulations, a bullet swap is defined as a financial instrument that is not an excluded contract as defined in § 1.446–3(c)(1)(ii), that provides for the computation of an amount or amounts due from one party to another by reference to a specified index upon a notional principal amount, and that provides for settlement of all the parties' obligations at or close to maturity of the contract, rather than for the payment of the specified amounts at specific intervals. The definition of bullet swap is intended to cover a contract that obligates each party to make a payment at the end of the contract, although only one net payment will actually be paid. For example, party A is obligated to pay at the end of three years a fixed rate multiplied by the notional amount. Also at the end of three years, party B is obligated to pay a variable rate multiplied by the same notional amount. At the end of three years, only one party makes a net payment equal to the difference between the fixed rate multiplied by the notional amount and the variable rate multiplied by the notional amount.

These regulations under section 1234A are proposed to apply to NPCs entered into on or after 30 days after the date of publication of the final regulations in the **Federal Register.**

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that very few small businesses enter into NPCs with contingent nonperiodic payments because these contracts are costly and complex and because they require constant monitoring and a sophisticated understanding of the capital markets. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 25, 2004, beginning at 10 a.m., in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments or electronic comments and an outline of topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 4, 2004. A period of 10 minutes will be allotted to each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kate Sleeth, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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. Section 1.162–30 is added to read as follows:

§ 1.162–30 Notional principal contract payments.

(a) *In general.* Amounts taken into account by a taxpayer pursuant to § 1.446–3(d)(1) (including mark-to-market deductions) with respect to a notional principal contract as defined in § 1.446–3(c)(1)(i), are deductible as ordinary and necessary business expenses. However, this section will not apply to any amount representing interest expense on the deemed loan component of a significant nonperiodic payment as described in § 1.446–3(g)(4). For any loss arising from a termination payment as defined in § 1.446–3(h)(1), see section 1234A and the regulations thereunder. For the timing of deductions with respect to notional principal contracts, *see* § 1.446–3.

(b) *Effective date.* Paragraph (a) of this section is applicable to notional principal contracts entered into on or after 30 days after the date a Treasury decision based on these proposed regulations is published in the **Federal Register.**

Par. 3. In § 1.212–1, paragraph (q) is added to read as follows:

§ 1.212–1 Nontrade or nonbusiness expenses.

* * * * *

(q) *Notional principal contract payments*—(1) Amounts taken into account by an individual pursuant to § 1.446–3(d)(1) (including mark-to-market deductions) with respect to a notional principal contract as defined in § 1.446–3(c)(1)(i), are ordinary and necessary, and are deductible to the extent these amounts are paid or incurred in connection with the production or collection of income. However, this section will not apply to any amount representing interest expense on the deemed loan component of a significant nonperiodic payment as described in § 1.446–3(g)(4). For any loss arising from a termination payment as defined in § 1.446–3(h)(1), see section 1234A and the regulations thereunder. For the timing of deductions with respect to notional principal contracts, *see* § 1.446–3.

(2) *Effective date.* Paragraph (q) of this section is applicable to notional principal contracts entered into on or after 30 days after the date a Treasury decision based on these proposed regulations is published in the **Federal Register.**

Par. 4. Section 1.446–3 is amended by:

1. Revising the introductory text of paragraph (a) and the table of contents in paragraph (a).
2. Adding paragraph (c)(5).
3. Revising paragraphs (d), (f)(2)(i), (f)(2)(iii)(A), and (g)(4).
4. Redesignating the text of paragraph (g)(6) as paragraph (g)(7).
5. Adding new paragraph (g)(6).
6. Amending the newly designated text of paragraph (g)(7) by:

(a) Revising the heading for *Example 3.*

(b) Adding *Example 5* through *Example 9.*

7. Revising paragraphs (i) and (j).

The revisions and additions read as follows:

§ 1.446–3 Notional principal contracts.

(a) *Table of contents.* This paragraph (a) lists captioned paragraphs contained in this section.

§ 1.446–3 Notional principal contracts.

(6) Election.
(j) Effective dates.
(1) General rule.
(2) Exception.
* * * * *

(c) * * *

(5) *Risk-free interest rate and determination date*—(i) *Risk-free interest rate.* The risk-free interest rate is the applicable Federal rate determined in accordance with section 1274(d)(1) for a determination date and the period remaining in the term of the contract on the determination date.

(ii) *Determination date.* A determination date is the commencement date of the swap, each redetermination date as defined in paragraph (g)(6)(ii) of this section, and each special redetermination date as defined in paragraph (g)(6)(iv)(B) of this section.

(d) *Taxable year of inclusion and deduction; adjustment of gain or loss*—(1) *Inclusion and deduction.* For all purposes of the Internal Revenue Code, the net income or net deduction from a notional principal contract for a taxable year is taken into account for that taxable year. The net income or net deduction from a notional principal contract for a taxable year equals the total of all of the periodic payments that are recognized from that contract for the taxable year under paragraph (e) of this section, all of the nonperiodic payments that are recognized from that contract for the taxable year under paragraph (f) of this section, and the mark-to-market income inclusions and deductions recognized from that contract under paragraph (i) of this section.

(2) *Adjustment of gain or loss.* Proper adjustment shall be made in the amount of any gain or loss realized on a sale, exchange, or termination of a notional principal contract for inclusions or deductions pursuant to paragraphs (d)(1) and (g)(4) of this section and for payments or receipts with respect to the notional principal contract.

* * * * *

(f) * * *

(2) *Recognition rules*—(i) *In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a nonperiodic payment for the taxable year to which that portion relates. Generally, a nonperiodic payment must be recognized over the term of a notional principal contract in a manner that reflects the economic substance of the contract. *See* paragraph (g)(6) of this section for additional rules for contingent nonperiodic payments.

* * * * *

(iii) * * *

(A) *Prepaid swaps.* An upfront payment on a swap may be amortized by assuming that the nonperiodic payment represents the present value of a series of equal payments made throughout the term of the swap contract (the level payment method), adjusted as appropriate to take account of increases or decreases in the notional principal amount. The discount rate used in this calculation must be the rate (or rates) used by the parties to determine the amount of the nonperiodic payment. If that rate is not readily ascertainable, the discount rate used must be a rate that is reasonable under the circumstances. Under this method, an upfront payment is allocated by dividing each equal payment into its principal recovery and time value components. The principal recovery components of the equal payments are treated as periodic payments that are deemed to be made on each of the dates that the swap contract provides for periodic payments by the payor of the nonperiodic payment or, if none, on each of the dates that the swap contract provides for periodic payments by the recipient of the nonperiodic payment. The sum of the principal recovery components equals the amount of the upfront payment. The time value component is used to compute the amortization of the nonperiodic payment but is otherwise disregarded. *See* paragraph (f)(4) *Example 5* of this section.

* * * * *

(g) * * *

(4) *Swaps with significant nonperiodic payments.* The parties to a swap with one or more significant nonperiodic payments must treat the contract as two or more separate transactions consisting of an on-market swap and one or more loans. The parties must account for the loans separately from the swap. The payments associated with the on-market swap are included in the net income or net deduction from the swap under paragraph (d) of this section. The time value components associated with the loans are not included in the net income or net deduction from the swap under paragraph (d) of this section but are recognized as interest for all purposes of the Internal Revenue Code. The on-market swap must result in recognition of the payments associated with the swap in a manner that complies with the principles set forth in paragraph (f)(2)(i) of this section. *See* paragraph (g)(7) *Example 3* of this section for a situation in which the on-market swap payments for a party making a significant nonperiodic upfront payment will be level payments that may be constructed through a combination of the actual payments on the swap and level payments computed under the level payment method provided by paragraph (f)(2)(iii)(A) of this section. In certain cases, a swap with significant nonperiodic payments other than an upfront payment may be treated as if the swap provided for a series of level payment loan advances having a present value equal to the present value of the nonperiodic payments, with the amount of each loan advance being immediately returned as a level payment on the swap. *See* paragraph (g)(7) *Example 5* of this section. For purposes of section 956, the Commissioner may treat any nonperiodic swap payment, whether or not it is significant, as one or more loans.

* * * * *

(6) *Notional principal contracts with contingent nonperiodic payments*—(i) *Definitions*—(A) *Noncontingent nonperiodic payments.* A noncontingent nonperiodic payment is a nonperiodic payment that either is fixed on or before the end of the taxable year in which a contract commences or is equal to the sum of amounts that would be periodic payments if they are paid when they become fixed (including amounts determined as interest accruals).

(B) *Contingent nonperiodic payments.* A contingent nonperiodic payment is any nonperiodic payment other than a noncontingent nonperiodic payment.

(ii) *Noncontingent swap method.* Under the noncontingent swap method, a taxpayer, regardless of its method of accounting, recognizes each contingent nonperiodic payment with respect to a notional principal contract by determining the projected amount of the payment and by applying to that projected amount the level payment method described in paragraphs (f)(2)(iii)(A) and (B) of this section. The projected amount of a contingent nonperiodic payment is the reasonably expected amount of the payment, which is determined by using one of the methods described in paragraph (g)(6)(iii) of this section and by using the risk-free interest rate in applying the level payment method. On each successive anniversary date for the notional principal contract (a redetermination date) and each special redetermination date (as defined in paragraph (g)(6)(iv)(B) of this section), the taxpayer must redetermine the projected amount of each contingent nonperiodic payment, reapply the level payment method as provided in paragraph (g)(6)(iv) of this section, and

make the adjustments specified in paragraph (g)(6)(v) of this section. If paragraph (g)(4) of this section applies to the notional principal contract, redeterminations and adjustments must also be made to account for the time value components of the transaction as interest in accordance with that paragraph. Except for contingent nonperiodic payments governed by paragraph (g)(6)(iv)(B) of this section, in the taxable year in which a contingent payment is made or received, the parties must make appropriate adjustments to the amount of income or deductions attributable to the notional principal contract for any differences between projected and actual contingent nonperiodic payments as provided in paragraph (g)(6)(vi) of this section.

(iii) *Determining projected amount of contingent payment*—(A) *Payment based on actively traded futures or forward contracts.* If a contingent nonperiodic payment is determined under the contract by reference to the value of a specified index on a designated future date, the projected amount of the payment may be determined on the basis of the future value for the specified index in actively traded futures or forward contracts, if any, providing for delivery or settlement on the designated future date. If no actively traded contract exists for the designated future date, a determination from the future values for the specified index in actively traded futures or forward contracts, if any, providing for delivery or settlement on dates within three months of the designated future date may be used.

(B) *Payment based on extrapolation from current market prices.* If a contingent nonperiodic payment is determined under the contract by reference to the value of a specified index on a designated future date, the projected amount of the payment may be determined on the basis of the current value of the specified index as established by objective financial information adjusted to convert the current value to a future value for the specified index on the designated future date. The current value is converted to a future value by adding to the current value an amount equal to the accrual of interest on the current value under a constant yield method at the risk-free interest rate with appropriate compounding and by making appropriate adjustments for expected cash payments on the property underlying the specified index.

(C) *Payment based on reasonable estimate.* If the methods provided in paragraphs (g)(6)(iii)(A) and (B) of this section do not result in a reasonable estimate of the amount of the contingent payment, the taxpayer must use another method that does result in a reasonable estimate of the amount of the contingent payment and that is based on objective financial information.

(iv) *Redeterminations of projected payments and level payment amounts*—(A) *General rule.* On each redetermination date, the taxpayer must redetermine the projected amount using current values on the redetermination date and the same method that was used on the commencement date of the notional principal contract, and must reapply the level payment method as of the commencement date of the notional principal contract on the basis of the new projected payment amount and the risk-free interest rate in effect on the redetermination date.

(B) *Special rule for fixed but deferred contingent nonperiodic payments.* If a contingent nonperiodic payment is fixed more than six months before it is due, and if the date the payment is fixed is in a different taxable year from the date the payment is due, the date on which the payment is fixed is a special redetermination date. As of that date, the taxpayer must treat the fixed amount as the projected amount for that contingent nonperiodic payment and apply paragraphs (g)(6)(iv) and (v) of this section as if the special redetermination date were a redetermination date.

(v) *Adjustments following redeterminations.* Following each redetermination of projected payments and level payment amounts, the taxpayer must apply the new schedule of level payments for purposes of determining amounts to be recognized in the current and subsequent taxable years with respect to the contingent nonperiodic payments. Any difference between the amounts recognized in prior taxable years and the amounts that would have been recognized in those years had the new level payment schedule been in effect for those years is taken into account as additional payments or receipts with respect to the contract ratably over the one-year period beginning with the redetermination date and, to the extent attributable to a difference in the interest amounts calculated under paragraph (g)(4) of this section, is recognized as interest for all purposes of the Internal Revenue Code.

(vi) *Adjustments for differences between projected and actual payments.* Any difference between the amounts taken into account under paragraph (f) and this paragraph (g)(6) on the one hand and the amount of the actual payment under the contract on the other hand is taken into account as an adjustment to the net income or net deduction from the notional principal contract for the taxable year during which the payment occurs, and not as an adjustment to interest income or expense.

(vii) *Recordkeeping requirements.* The books and records maintained by a taxpayer must contain a description of the method used to determine the projected amount of a contingent payment, projected payment schedules, any adjustments following redeterminations, and any adjustments for differences between projected and actual contingent payments.

(7) * * *

Example 3. Upfront significant nonperiodic payment. * * *

* * * * *

Example 5. Backloaded significant nonperiodic payment. (i) On January 1, 2003, unrelated parties *P* and *Q* enter into an interest rate swap contract. Under the terms of the contract, *P* agrees to make five annual payments to *Q* equal to LIBOR times a notional principal amount of $100,000,000. In return, *Q* agrees to pay *P* 6% of $100,000,000 annually, plus $24,420,400 on December 31, 2007. At the time *P* and *Q* enter into this swap agreement the rate for similar on-market swaps is LIBOR to 10%. Assume that on January 1, 2003, the risk-free rate is 10%.

(ii) The $24,420,400 payment from *Q* to *P* is significant when compared to the present value of the total payments due from *Q* under the contract. Accordingly, pursuant to paragraph (g)(4) of this section, the transaction is recharacterized as two separate transactions. First, *P* is treated as paying to *Q* a series of $4,000,000 level payment loan advances. The present value of the level payment loan advances equals the present value of $24,420,400, the significant nonperiodic payment. Stated differently, the sum of the level payment loan advances and accrued interest on those advances equals the significant nonperiodic payment.

(iii) Next, *Q* is treated as using each loan advance to fund five annual level swap payments of $4,000,000. The level payment loan advances and accrued interest on the advances computed with annual compounding at 10% are as follows:

	Level payment	Accrued interest
2003	$4,000,000	$0
2004	4,000,000	400,000
2005	4,000,000	840,000
2006	4,000,000	1,324,000
2007	4,000,000	1,856,400
	$20,000,000	$4,420,400

(iv) *P* recognizes interest income, and *Q* accrues interest expense, each taxable year equal to the interest accruals on the deemed level payment loan advances. These interest amounts are not included in the parties' net income or net deduction from the swap contract under paragraph (d) of this section.

(v) The level payment amounts of $4,000,000 are taken into account in determining the parties' net income and deductions on the swap pursuant to paragraph (d) of this section.

Example 6. Contingent nonperiodic payment on an equity swap. (i) On January 1, 2005, unrelated parties V and *W* enter into an equity swap contract. Under the terms of the contract, V agrees to make three annual payments to *W* equal to 1-year LIBOR times a notional principal amount of $50,000,000. In return, *W* agrees to make a single payment on December 31, 2007, equal to the appreciation, if any, of a $50,000,000 investment in a basket of equity securities over the term of the swap. V is obligated to make a single payment on December 31, 2007, equal to the depreciation, if any, in the same $50,000,000 investment in the basket of equity securities. Assume that on January 1, 2005, 1-year LIBOR is 9.5%, and the risk-free rate is 10.0%.

(ii) This contract is a notional principal contract as defined in paragraph (c)(1) of this section. The annual LIBOR-based payments from *V* to *W* are periodic payments and the single payment on December 31, 2007, is a contingent nonperiodic payment.

(iii) Pursuant to the method described in (g)(6)(iii)(B) of this section, the parties determine that the projected amount of the contingent nonperiodic payment that *W* will pay *V* on December 31, 2007, is $16,550,000. The present value of this projected fixed payment is significant when compared to the present value of the total payments due from *W* under the contract. Accordingly, pursuant to paragraph (g)(4) of this section, the transaction is recharacterized as two separate transactions.

(iv) As a preliminary step, using the risk-free rate of 10.0% as the discount rate, the parties determine the level payment amounts that have a present value equal to the present value of $16,550,000, the projected significant nonperiodic payment. Stated differently, the sum of the level payment amounts and accrued interest at 10.0% on those amounts must equal the projected significant nonperiodic payment. The level payment amounts thus determined are $5,000,000.

(v) Next, *V* is treated as paying to *W* a series of $5,000,000 loan advances.

(vi) Then, *W* is treated as using each loan advance to fund one of the three annual level swap payments of $5,000,000. The level payment loan advances and accrued interest on the advances computed with annual compounding at 10.0% are as follows:

	Level payment	Accrued interest
2005	$5,000,000	$0
2006	5,000,000	500,000
2007	5,000,000	1,050,000
	$15,000,000	$1,550,000

(vii) No interest amount is taken into account for the contract year 2005.

(viii) The level payment amount of $5,000,000 is taken into account for the contract year 2005 in determining the parties' net income and deductions on the swap pursuant to paragraph (d) of this section.

(ix) For the contract year 2005, *V* makes a swap payment to *W* equal to 1-year LIBOR at 9.5% times $50,000,000, or $4,750,000, and *W* is deemed to make a swap payment to *V* equal to the annual level payment of $5,000,000. The net of the ratable daily portions of these payments determines the annual net income or deduction from the contract for both *V* and *W*.

Example 7. Initial Adjustment. (i) The terms of the equity swap agreement are the same as in *Example 6*. In addition, assume that on January 1, 2006, the first redetermination date, 1-year LIBOR is 10.0%, and the risk-free rate is 10.5%. On that date, the parties redetermine the projected amount of the contingent nonperiodic payment using current values in effect on that date. Under the method described in (g)(6)(iii)(B) of this section, the parties determine that the reprojected amount of the contingent nonperiodic payment that *W* will pay *V* on December 31, 2007, is $23,261,500. The present value as of January 1, 2005, of this projected fixed payment is significant when compared to the present value of the total payments due from *W* under the contract. Accordingly, pursuant to paragraph (g)(4) of this section, the transaction is recharacterized as two separate transactions.

(ii) The parties use the redetermined projected amount of $23,261,500, to reapply the method provided by paragraph (g)(4) of this section effective as of the commencement date of the swap. As a preliminary step, using the risk-free rate of 10.5% as the discount rate, the parties determine the level payment amounts that have a present value equal to the present value of $23,261,500, the reprojected significant nonperiodic payment. Stated differently, the sum of the level payment amounts and accrued interest at 10.5% on those amounts must equal the reprojected significant nonperiodic payment. The level payment amounts thus determined are $6,993,784.

(iii) Next, *V* is treated as paying to *W* a series of $6,993,784 loan advances.

(iv) Then, *W* is treated as using each loan advance to fund one of the three annual level swap payments of $6,993,784. The level payment loan advances and accrued interest on the advances computed with annual compounding at 10.5%, are as follows:

	Level payment	Accrued interest
2005	$6,993,784	$0
2006	6,993,784	734,347
2007	6,993,784	1,545,801
	$20,981,352	$2,280,148

(v) For the contract year 2006, *V* recognizes interest income, and *W* accrues interest expense equal to the accrued interest of $734,347 on the deemed level payment loan advance. These interest amounts are not included in the parties' net income or net deduction from the swap contract under paragraph (d) of this section.

(vi) The level payment amount of $6,993,784 is taken into account for the contract year 2006 in determining the parties' net income and deductions on the swap pursuant to paragraph (d) of this section.

(vii) The parties also take into account for the contract year 2006 the difference between the amount recognized for 2005 and the amount that would have been recognized in 2005 had the new level payment schedule in this *Example 7* been in effect in 2005. Thus, for purposes of paragraph (d) of this section, *W* is treated as making a swap payment, and *V* is treated as receiving a swap payment of $1,993,784 ($6,993,784 − $5,000,000) for purposes of paragraph (d) of this section.

(viii) For the contract year 2006, *V* makes a swap payment to *W* equal to 1-year LIBOR at 10.0% times $50,000,000, or $5,000,000, and *W* is deemed to make a swap payment to *V* equal to the annual level payment of $6,993,784 and the adjustment amount of $1,993,784. The net of the ratable daily portions of these payments determines the annual net income or deduction from the contract for both *V* and *W*.

Example 8. Subsequent Adjustment. (i) The terms of the equity swap agreement are the same as in *Example 7*. In addition, assume that on January 1, 2007, the second redetermination date, 1-year LIBOR is 11.0%, and the risk-free rate is also 11.0%. On that date, the parties redetermine the projected amount of the contingent nonperiodic payment using current values in effect on that date. The parties determine that the reprojected amount of the contingent nonperiodic payment that *W* will pay *V* on December 31, 2007, is $11,050,000. The present value as of January 1, 2005, of this projected fixed payment is significant when compared to the present value of the total payments due from *W* under the contract. Accordingly, pursuant to paragraph (g)(4) of this section, the transaction is recharacterized as two separate transactions.

(ii) The parties use the redetermined projected amount of $11,050,000, to reapply the method provided by paragraph (g)(4) effective as of the commencement date of the swap. As a preliminary step, using the risk-free rate of 11.0% as the discount rate, the parties determine the level payment amounts that have a present value equal to the present value of $11,050,000, the reprojected significant nonperiodic payment. Stated differently, the sum of the level payment amounts and accrued interest at 11.0% on those amounts must equal the reprojected significant nonperiodic payment. The level payment amounts thus determined are $3,306,304.

(iii) Next, *V* is treated as paying to *W* a series of $3,306,304 loan advances.

(iv) Then, *W* is treated as using each loan advance to fund one of the three annual level swap payments of $3,306,304. The level payment loan advances and accrued interest on the loan advances computed with annual compounding at 11.0% are as follows:

	Level payment	Accrued interest
2005	$3,306,304	$ 0
2006	3,306,304	363,693

	Level payment	Accrued interest
2007	3,306,304	767,393
	$9,918,912	$1,131,086

(v) For 2007, *V* recognizes interest income, and *W* accrues interest expense equal to the $767,393 accrued interest amount for 2007 on the deemed loan advances. In addition, *V* has a net interest expense item and *W* has a net interest income item equal to $370,654 ($734,347 − 363,693), the difference between the interest accrual taken into account for 2006 and the amount that would have been taken into account for 2006 had the new level payment schedule in this *Example 8* been in effect for 2006. As a result, *V* has net interest income and *W* has net interest expense in the amount of $396,739 for 2007. These interest amounts are not included in the parties' net income or net deduction from the swap contract under paragraph (d) of this section.

(vi) The level payment amount of $3,306,304 is taken into account for the contract year 2007 in determining the parties' net income and deductions on the swap pursuant to paragraph (d) of this section.

(vii) For 2007, the parties also take into account for 2007 the difference between the amounts previously recognized for 2005 and 2006 and the amounts that would have been recognized for those years had the new level payment schedule in this *Example 8* been in effect in 2005 and 2006. The amounts previously recognized were: a total of $6,993,784 for 2005, which is the sum of $5,000,000 (in 2005) and $1,993,784 (in 2006), and a total of $6,993,784 for 2006 (in 2006). The adjustment amount, therefore, equals two times $3,687,480 ($6,993,784 − $3,306,304), or $7,374,960. This amount is taken into account as a payment for purposes of paragraph (d) of this section.

(viii) For the contract year 2007, *V* makes a swap payment to *W* equal to 1-year LIBOR at 11.0% times $5,000,000, or $5,500,000. *W* is deemed to make a swap payment to *V* equal to the annual level payment for 2007 of $3,306,304, and *V* is deemed to make a swap payment to *W* equal to the adjustment amount of $7,374,960. The net of the ratable daily portions of these payments determines the annual net income or deduction from the contract for both *V* and *W*.

Example 9. Adjustment for actual payment. (i) The terms of the equity swap agreement are the same as in *Example 8*. In addition, on December 31, 2007, *W* makes a payment to *V* of $25,000,000, an amount equal to the appreciation of a $50,000,000 investment in the basket of equity securities.

(ii) For 2007, $13,950,000, the difference between $25,000,000 and $11,050,000, the projected amount of the contingent payment as of January 1, 2007, is taken into account as an adjustment to the parties' net income or deductions for each party's taxable year that contains December 31, 2007, pursuant to paragraph (d) of this section.

* * * * *

(i) *Election to mark to market.* A taxpayer may elect to mark to market notional principal contracts providing for nonperiodic payments. The rules of paragraphs (f) (other than (f)(2)(i)), (g)(6)(ii) through (vii), and (h) of this section do not apply to contracts to which this paragraph (i) applies. See paragraph (i)(5) of this section for rules respecting interest accruals under paragraph (g)(4) of this section for contracts providing for significant nonperiodic payments to which this paragraph (i) applies.

(1) *General rule.* In the case of any contract held at the close of the taxable year to which this paragraph (i) applies, the taxpayer shall determine income inclusions and deductions by reference to the gain or loss that would be realized if the contract were sold for its fair market value on the last business day of the taxable year. Proper adjustment shall be made in the amount of any gain or loss subsequently realized (or calculated) for the income inclusions and deductions taken into account by reason of this paragraph (i)(1) as provided in paragraph (d)(2) of this section.

(2) *Scope of election.* The election provided by this paragraph is available for notional principal contracts that are—

(i) Of a type that is actively traded within the meaning of § 1.1092(d)–1(c) (determined without regard to the limitation in § 1.1092(d)–1(c)(2));

(ii) Marked to market by the taxpayer for purposes of determining the taxpayer's financial income provided the taxpayer satisfies the requirements in paragraph (i)(4) of this section;

(iii) Subject to an agreement by a party to the contract that is subject to section 475 to supply to the taxpayer the value that it uses in applying section 475(a)(2); or

(iv) Marked to market by a regulated investment company described in section 1296(e)(2).

(3) *Determination of fair market value.* For purposes of paragraph (i)(1) of this section, fair market value is determined by applying the rules set forth in paragraphs (i)(3)(i) through (iv) of this section.

(i) *Determination based on readily ascertainable value.* For a contract described in paragraph (i)(2)(i) of this section, fair market value is determined based on the mean between the bid and asked prices quoted for the contract on an established financial market as defined in § 1.1092(d)–1(b)(1), or, if bid and asked prices are not available, comparable prices determined on the basis of recent price quotations described in § 1.1092(d)–1(b)(2).

(ii) *Determination based on value used for financial statements.* For a contract described in paragraph (i)(2)(ii) of this section that is not described in paragraph (i)(2)(i) of this section, fair market value is the value used by the taxpayer for purposes of preparing its financial statements under paragraph (i)(4) of this section.

(iii) *Determination based on counterparty's mark-to-market value.* For a contract described in paragraph (i)(2)(iii) of this section that is not described in paragraph (i)(2)(i) of this section, fair market value is the mark-to-market value provided by a counterparty as being the value the counterparty used for purposes of section 475(a)(2).

(iv) *Determination based on value used in determining net asset value.* Notwithstanding paragraphs (i)(3)(i) through (iii) of this section, for a contract described in paragraph (i)(2)(iv) of this section, fair market value is the value used by the taxpayer in determining its net asset value.

(4) *Requirements for use of financial statement values.* [Reserved].

(5) *Notional principal contracts accruing interest on significant nonperiodic payments*—(i) *General rule.* If a notional principal contract that is marked to market under this paragraph (i) provides for one or more significant nonperiodic payments, paragraph (g)(4) of this section applies to the contract (computed with regard to the rule in paragraph (i)(5)(ii) of this section). Proper adjustment shall be made in the amount of any income inclusions or deductions recognized under paragraph (i)(1) of this section to take into account amounts recognized as interest under paragraph (g)(4) of this section and the payment or receipt of the nonperiodic payment or payments.

(ii) *Special rules for significant contingent nonperiodic payments.* In the case of a contract providing for a significant contingent nonperiodic payment, the projected amount of the payment is determined by applying one

of the methods described in paragraph (g)(6)(iii) of this section or by applying the deemed equivalent value method described in this paragraph (i)(5)(ii). The amount of the payment is not redetermined except as provided in paragraph (g)(6)(iv)(B) of this section. The deemed equivalent value method may be applied if the contract fixes the timing and amount of all of the payments under the contract, except for a sole significant contingent nonperiodic payment. Under the deemed equivalent value method, the amount of the significant contingent nonperiodic payment is the amount that, as of the date the terms of the contract are fixed, causes the present value of all of the payments by the taxpayer to equal the present value of all of the payments of the counterparty to the contract. The present value of each payment of the contract is determined by applying the risk-free interest rate.

(iii) *Nonapplicability to regulated investment companies.* Paragraphs (i)(5)(i) and (ii) of this section do not apply to a regulated investment company described in paragraph (i)(2)(iv) of this section that makes an election under paragraph (i) of this section.

(6) *Election.* An election to apply this paragraph (i) must be made with respect to all notional principal contracts described in paragraph (i)(2) of this section to which the taxpayer is a party. The election must be made in the time and manner prescribed by the Commissioner and is effective for the taxable year for which made and all subsequent taxable years, unless revoked with the consent of the Commissioner.

(j) *Effective dates*—(1) *General rule.* Except as provided in paragraph (j)(2) of this section, this section is applicable for notional principal contracts entered into on or after December 13, 1993.

(2) *Exception.* Paragraphs (g)(6) (other than (g)(6)(i)) and (i) of this section are applicable for notional principal contracts entered into on or after 30 days after the date a Treasury decision based on these proposed regulations is published in the **Federal Register**.

Par. 5. Section 1.1234A–1 is added to read as follows:

§ 1.1234A–1 Notional principal contracts, bullet swaps, and forward contracts.

(a) *General rule.* If a taxpayer has a position in a notional principal contract governed by the rules of § 1.446–3, any gain or loss arising from a termination payment as defined in § 1.446–3(h)(1) is treated as gain or loss from a termination of the notional principal contract.

(b) *Nonapplicability to payments other than termination payments.* For purposes of section 1234A, none of the following payments terminate or cancel a right or obligation: a periodic payment described in § 1.446–3(e), a nonperiodic payment described in § 1.446–3(f), a contingent nonperiodic payment described in § 1.446–3(g)(6) to which § 1.446–3(g)(6)(ii) applies, or mark-to-market income inclusions and deductions described in § 1.446–3(i)(1). Accordingly, section 1234A does not apply to any of these items, including any final scheduled payment. If a payment made or received pursuant to a notional principal contract is not a termination payment as defined in § 1.446–3(h)(1), the payment constitutes ordinary income or expense. See sections 162 and 212 and the regulations thereunder.

(c) *Bullets swaps and forward contracts*—(1) Any gain or loss arising from the settlement of obligations under a bullet swap or forward contract (including a payment pursuant to the terms of the obligations) is treated as gain or loss from a termination of the bullet swap or forward contract.

(2) *Definition of bullet swap.* A bullet swap is a financial instrument that is not an excluded contract as defined in § 1.446–3(c)(1)(ii), that provides for the computation of an amount or amounts due from one party to another by reference to a specified index upon a notional principal amount, and that provides for settlement of all the parties' obligations at or close to maturity of the contract.

(d) *Effective date.* Paragraphs (b)(1) and (c) of this section are applicable to notional principal contracts, bullet swaps, and forward contracts entered into on or after 30 days after the date a Treasury decision based on these proposed regulations is published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–4151 Filed 2–25–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 778, 843 and 847

RIN 1029–AC08

Ownership and Control Settlement Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are extending the comment period on the proposed Ownership and Control Settlement Rule published on December 29, 2003. The comment period is being extended in response to a request for an extension from members of the public.

DATES: We will accept written comments on the proposed rule until 5 p.m., Eastern Time on March 29, 2004.

ADDRESSES: You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also submit comments electronically to OSM at the following Internet address: *osmrules@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 260–8424 or (800) 643–9748. E-Mail: *ebandy@osmre.gov*.

SUPPLEMENTARY INFORMATION: On December 29, 2003 (68 FR 75036), we published a proposed rule for public comment. The proposed rule, referred to as the Ownership and Control Settlement Rule, would revise certain provisions adopted in our December 19, 2000, Ownership and Control final rule in order to effectuate a settlement agreement we entered into with the National Mining Association. Specifically, the proposed rule would revise the provisions in the 2000 final rule pertaining to the definitions of ownership and control; permit eligibility determinations eligibility for provisionally issued permits; improvidently issued permits; challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory

authorities and other actions based on ownership, control, and violation information; providing applicant, operator, and ownership and control information; improvidently issued State permits; and alternative enforcement. Additional information is contained in the proposed rule published on December 29, 2003.

The comment period on the proposed rule was scheduled to close on February 27, 2004. In response to a request from members of the public, we are extending the public comment period to March 29, 2004.

Dated: February 19, 2004.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 04–4300 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 816, and 817

RIN 1029–AC04

Surface Coal Mining and Reclamation Operations; Excess Spoil; Stream Buffer Zones; Diversions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearings.

SUMMARY: We are extending the comment period on our proposed rule commonly referred to as the "excess spoil/stream buffer zone rule." The comment period is being extended by 30 days in order to afford the public more time to comment and to allow enough time to hold five public hearings. We are also notifying the public of the dates and locations for five public hearings on the proposed rule.

DATES: We will accept written comments on the proposed rule until 5 p.m., eastern time, on April 7, 2004.

See the **SUPPLEMENTARY INFORMATION** section for the hearing dates.

ADDRESSES: You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240, or you may send comments via electronic mail to *osmrules@osmre.gov*.

If you wish to comment on the information collection aspects of this proposed rule, you may submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *oira_docket@omb.eop.gov*, or via facsimile to 202–365–6566.

See the **SUPPLEMENTARY INFORMATION** section for hearing addresses.

FOR FURTHER INFORMATION CONTACT: David G. Hartos, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220; Telephone: 412–937–2909. E-mail address: *dhartos@osmre.gov*. Additional information concerning this rule and related documents may be found on our home page on the Internet at *http://www.osmre.gov/ocpropos.htm*.

SUPPLEMENTARY INFORMATION: On January 7, 2004 (69 FR 1036), we published a proposed rule that would minimize the adverse environmental effects stemming from the construction of excess spoil fills associated with coal mining in Appalachia. The proposed rule would also clarify the circumstances in which mining activities, such as the construction of excess spoil fills, may be allowed within the "stream buffer zone" within 100 feet of a perennial or intermittent stream. The comment period on the proposed rule was scheduled to close on March 8, 2004. We have received six requests to hold public hearings on the proposed rule from representatives of the following organizations: Save Our Cumberland Mountains, Citizens Coal Council, Kentuckians for the Commonwealth, Mountain Watershed Association, Inc., Coal River Watch, and Tri-State Citizens Mining Network. We are granting their requests for public hearings and are extending the comment period on the proposed rule by 30 days in order to hold the following five hearings on the dates and locations shown below:

1. March 30, 2004, 6 p.m. to 9 p.m., Charleston Civic Center, Room 206, 200 Civic Center Drive, Charleston, WV.
2. March 30, 2004, 6 p.m. to 9 p.m., Best Western Parkway Center, 8th Floor in the Horizon Room, 875 Greentree Road, Greentree, PA.
3. March 30, 2004, 6 p.m. to 9 p.m., Hazard Community College, Hazard Campus, Jolly Center, Room 208, One Community College Drive, Hazard, KY.
4. March 30, 2004, 6 p.m. to 9 p.m., Roane State Community College, O'Brien Building, Room 101, 276 Patton Lane, Harriman, TN.
5. March 30, 2004, from 2 p.m. to 4 p.m., Office of Surface Mining, South Interior Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240.

Please use the rear entrance to the building and have photo identification with you.

These hearings will be open to anyone who would like to attend and/or testify. The primary purpose of the public hearing is to obtain your views on the proposed rule so that we can prepare a complete and objective analysis. A public hearing is not an adversarial process and, therefore, we encourage you to limit your testimony to the proposed rule. We appreciate any and all comments, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analyses of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, technical literature, or relevant publications.

At the hearing, a court reporter will record and make a written record of the statements presented. This written record will be made part of the administrative record for the rule. If you have a written copy of your testimony, we encourage you to give us a copy. It will assist the court reporter in preparing the written record. Please do not feel intimidated by either the reporter or the formal structure of the hearing. Any disabled individual who needs special accommodation to attend a public hearing is encouraged to contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 18, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 04–4299 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Packaging Standards and General Mailability

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule contains minor changes to the *Domestic Mail Manual* (DMM™) that would clarify packaging and closure requirements, types of acceptable mailing containers, and standards for certain articles processed on Postal Service™ parcel sorting equipment. This proposed rule would also update terminology and reorganize current standards for better reference and presentation.

DATES: Submit comments on or before March 29, 2004.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, Attn: Neil Berger, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may also be submitted by facsimile transmission to (703) 292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 11th Floor North, 475 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Mailing Standards, U.S. Postal Service.

SUPPLEMENTARY INFORMATION: When the general mailability standards from *Domestic Mail Manual* (DMM) Issue 45 were consolidated and republished as part C010 in DMM Issue 46 on July 1, 1993, most of the same standards on packing, closing, and sealing mailable articles were also transferred to Postal Service Publication 2, *Packaging for Mailing*. In the intervening 10 years, the Postal Service has made relatively few editorial or substantive changes to the current mailing standards and information in either DMM C010 or in Publication 2.

With the growing awareness in effective package preparation, especially for parcels, the Postal Service believes that it is important to reexamine these mailing standards, update them where appropriate, and present them in a more logical sequence.

Throughout this document and the relevant DMM sections, the term "package" is used to mean a parcel, and is not to be confused with the same term used in conjunction with mail preparation and presort destination packages of letter-size and flat-size mailpieces.

The following listing represents the major proposed changes:

Part C010.2.0. This part would be slightly reorganized, with additional proposed packaging standards included about certain items such as liquids, high-density items, and hazardous materials that require special packaging and markings.

Part C010.3.0. This part would be slightly reorganized, with additional proposed packaging standards for boxes and changes to the minimum thickness of heat-shrinkable plastic film (shrinkwrap) acceptable for easy and average loads of up to 5 pounds. Proposed DMM C010.3.1d would restore the use of paper or plastic wrappers as an outside cover for a box if the paper is at least of 60-pound basis weight or the plastic is at least 2 mils thick and snugly secured to the box either with tape or heatshrinking. Proposed DMM C010.3.4 would increase the minimum thickness specification (mil) for plastic film used as the mailing container from ¾ mil for easy loads and 1¼ mils for average loads to a minimum thickness of 2 mils for either easy or average loads. This proposed change to a heavier film would be consistent with the current standards for plastic mailing bags in proposed DMM C010.3.3. This proposed change would also ensure that mailpieces using plastic film solely as the mailing container would maintain their integrity throughout transit, processing, and delivery.

Part C010.4.0. This part would contain the standards for special mailing envelopes currently in DMM C010.6.0.

Part C010.5.0. This part would include examples and the standards for cushioning material currently in DMM C010.4.0.

Part C010.6.0. This part would contain the standards for closing, sealing, and reinforcing parcels currently in DMM C010.5.0. Proposed changes would clarify that duct tape would not be acceptable for closing or reinforcing parcels. This part would include additional information on the various types of permissible tapes. This part would also expressly prohibit the use of twine or cord for closure and reinforcement.

Part C010.8.0. This part would be extensively amended and reorganized to clarify packaging standards and to separate the mailpiece weight categories for various types of articles weighing 35 pounds and under from those weighing more than 35 pounds. This proposed change would reflect the current separation between machinable and nonmachinable parcels based on the 35-pound threshold. Books, printed matter, and business forms do have a 25-pound weight limit for machinability as specified in DMM C700.2.0. Under DMM C010.8.5 for magnetic tapes, the minimum thickness for plastic film wraps for individual tapes would be changed from 0.00075 mil to ¾ mil, and the fiberboard and chipboard minimum specifications of 0.022 mil (also designated as 22 points) would be changed to 125-pound test fiberboard or equivalent.

M041.5.6. This section would be amended to specify that high-density parcels weighing 25 to 35 pounds would not be permitted on pallets containing machinable parcels.

USPS Publication 2. This proposed rule would eliminate Publication 2, *Packaging for Mailing*, after all pertinent information is transferred to the DMM.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

* * * * *

2.0 PACKAGING

[Revise heading of 2.1 to read as follows:]

2.1 Preparation Adequacy

[Revise 2.1 to read as follows:]

Letters, flats, and parcels presented for mailing must be prepared under the general and specific standards in the *Domestic Mail Manual*. Parcels must be able to withstand normal transit and handling without breakage, injury to USPS® employees, or damage to other mail. In addition to the standards in 1.0, parcels must have an address side with enough surface area to accommodate completely the delivery address, return address, postage, markings, endorsements, and any barcode and special service markings. Separate and additional standards can apply to overseas military mail and international mail. Mailers can evaluate the adequacy of their packaging for parcels by using Test Procedure 1A developed by the International Safe Transit Association (ISTA) (see G043 for address).

2.2 Acceptability

[Revise 2.2 by adding 2.9 as the second sentence then revising to read as follows:]

No mailpiece may be prepared or packed so that its contents or physical

construction could harm employees or damage equipment or other mail. Perishable items must be packed to prevent deterioration or degradation. Fragile items must be packed to withstand mail processing and transportation. Heavy items must be braced and cushioned to prevent damage to other mail. State and federal regulations can also affect the mailability of mailpieces containing items such as hazardous, biological, and restricted materials (see C020). The USPS accepts only properly prepared and marked letters, flats, and parcels and reserves the right to refuse nonmailable matter under 10.0 or any improperly prepared or packed article or substance.

[Revise title of 2.3 to read as follows:]

2.3 Special Items

[Revise 2.3 by combining with current 2.4, 2.5, 2.6, and 2.7 to read as follows:]

The following items require special attention in packaging:

a. *Stationery.* Stationery-type items measuring more than 1 inch thick or weighing more than 1 pound are not accepted in flat nongussetted envelopes. The contents must be unitized within the envelope or mailing container by tying, banding, or using partitions on close-fitting interior containers to prevent shifting, damage to the contents, and breakage to the envelope or mailing container.

b. *Liquids.* Mailpieces containing liquids must meet these additional standards:

(1) Containers with only friction-top closures (push-down types) are not acceptable. Screw-on caps, soldering, clips, or other means must be used for closure.

(2) Glass and other breakable containers of liquid with a capacity of more than 4 fluid ounces must be cushioned, with material sufficient to absorb any leakage in case of breakage, inside a sealed, leakproof container. Containers of liquid with a capacity of more than 32 fluid ounces must also be packed within another sealed, leakproof container such as a can or sealable plastic bag. The outer mailing container must be strong enough to protect the contents and must be marked to indicate the liquid nature of the contents. The marking "LIQUID" with orientation markings (*i.e.*, up arrows) indicating the upright position of the mailing container may be used.

(3) Steel pails and drums with carrying handles and positive closures, such as locking rings or recessed spouts under screw-cap closures, may be accepted without additional packaging.

c. *High-Density Items.* These items are solid objects other than books (or similar publications) whose weight is comparatively high for their volume (*e.g.*, tools, hardware, and machine and auto parts). High-density items weighing more than 15 pounds must be packed so that the contents do not exert more than 60 pounds per square foot (0.4167 pound per square inch) on the smallest side of the mailing container.

d. *Perishable, Hazardous, or Restricted Items.* These items must be packed and marked under C022, C023, or C024, respectively.

[Redesignate current 2.8 as new 2.4.]

2.4 Load Type

[Revise new 2.4 to read as follows:]

The following three terms describe types of loads, based on content, degree of protection, and strength of the package or mailing container:

a. An *easy load* contains items of moderate density that completely fill the mailing container, or are packed with sufficient surrounding cushioning materials that completely fill the mailing container or are packed in interior containers that completely fill the outer mailing container. This load type is not easily damaged by shock, compression, or puncture, and does not shift within the mailing container or present a hazard to other parcels.

b. An *average load* contains moderately concentrated items packed directly into a mailing container or are subjected to an intermediate stage of packing providing partial support to all surfaces of the mailing container. This load type can be prepacked by nesting items within partitions or in separate paperboard boxes to stabilize items and prevent shifting and damage.

c. A *difficult load* contains items that require a high degree of protection to prevent shock, puncture, or distortion to the items or the mailing container. Fragile items, delicate instruments, and high-density, small-bulky items that do not support the mailing container are not acceptable in paperboard boxes, bags, or wraps.

[Delete 2.9.]

[Revise heading of 3.0 to read as follows:]

3.0 MAILING CONTAINERS—PARCELS

3.1 Boxes

[Revise 3.1 by combining current 3.1a, 3.1b, 3.1c, and 3.1d into new 3.1a; by redesignating current 3.1e and 3.1f as 3.1b and 3.1c respectively; by adding new 3.1d; and by redesignating current 3.1g as 3.1e to read as follows:]

Boxes are acceptable, subject to these standards:

a. Box material:

[Revise 3.1a(1) by changing "up to 10 pounds" to "up to 5 pounds" in first sentence and "up to 20 pounds" to "up to 10 pounds" in the second sentence to read as follows:]

(1) Paperboard boxes (*e.g.*, suitbox) may be used for easy and average loads up to 5 pounds if the contents and any cushioning material fill the boxes completely. Metal-stayed paperboard boxes may be used for easy and average loads up to 10 pounds.

(2) Solid and corrugated fiberboard boxes may be used for all load types as shown in Exhibit 3.1, unless otherwise specified. The first maximum reached whether combined length and girth or weight, determines the box grade required. The box grade (bursting strength) is printed within the boxmaker's certificate on the box and shows other specifications such as size and gross weight limits.

(3) Wood, metal, or plastic boxes may be used for all types of loads, assuming adequate construction. See 8.0 for USPS parcel sorting system standards.

Exhibit 3.1 Fiberboard Boxes

[Add new Exhibit 3.1 to read as follows:]

Maximum weight of box and content (pounds)		Maximum length and girth (inches)	Box grade
Easy or average load	Difficult load		
20	N/A	67	125
40	20	100	175
65	45	108	200
70	65	108	275
N/A	70	108	350
N/A	70	130	350

b. The size of the box must be sufficiently adequate to contain the items and provide enough space for cushioning material. See 5.0.

c. Used boxes in good, rigid condition, with all flaps intact, are acceptable if all obsolete labels and markings (from previous mailings or other uses) are entirely removed or completely obliterated.

d. A paper wrapper such as kraft paper may be used as an outside cover for a box if the paper is at least of 60-pound basis weight and snugly secured to the box. A plastic cover may also be used as an outside cover if the plastic is at least 2 mils thick and snugly secured to the box by shrinkwrapping or heatshrinking.

e. Except for parcels prepared for destination delivery unit entry (*e.g.*, Parcel Select®-DDU), boxes with difficult loads must be reinforced with

banding about every 8 inches in each direction around the package.

[Delete 3.2 and redesignate current 3.3 through 3.10 as new 3.2 through 3.9, respectively.]

[Revise title and text of new 3.2 to read as follows:]

3.2 Paper Mailing Bags and Wraps

Paper mailing bags and wraps are acceptable as mailing containers only for easy and average loads (see 2.4) of up to 20 pounds and only if the contents are compressed and stabilized as much as possible. Paper bags and wraps are used according to these weight categories:

a. For easy loads of up to 5 pounds, paper bags and wraps must be at least of a 50-pound basis weight (the strength of an average large grocery bag) and the contents must be immune from impact or pressure damage. A combination of plies (double bagging) adding up to or exceeding a 50-pound basis weight is not acceptable.

b. For easy and average loads of up to 20 pounds, paper bags must be reinforced or at least of a 70-pound basis weight. Nonreinforced loose-fill padded bags are not acceptable as mailing containers, unless the exterior ply is at least of a 60-pound basis weight.

[Revise title and text of new 3.3 to read as follows:]

3.3 Plastic Mailing Bags

Bags of polyethylene or equivalent plastic material must be securely sealed and are acceptable only for easy loads (see 2.4) of up to 10 pounds as follows:

a. Up to 5 pounds, the plastic must be at least 2 mils thick.

b. More than 5 pounds and up to 10 pounds, the plastic must be at least 4 mils thick.

3.4 Plastic Film

[Revise new 3.4 by changing the required thickness for all permitted load types to at least 2 mils to read as follows:]

Heat-shrinkable plastic film (*e.g.*, irradiated polyethylene, linear low-density polyolefin, or copolymer) is acceptable solely as a mailing container only for easy and average loads of up to 5 pounds. The film must be at least 2 mils thick. When requested, mailers must provide documentation that this film is being used for mailing.

3.5 Cloth Bags

[Revise the first sentence and add a new second sentence to 3.5 to read as follows:]

Cloth bags are acceptable only for easy and average loads of up to 10 pounds. All seams of the bags must equal the strength of the basic material. Adhesive address labels or adhesive postage may not be affixed to cloth sacks.

3.6 Bales

[Revise new 3.6 by changing "within postal weight limits" to "only for easy and average loads of up to 70 pounds" to read as follows:]

Bales are acceptable only for easy and average loads of up to 70 pounds, if adequately compressed and reinforced to contain the material.

3.7 Envelopes

[Revise new 3.7 to read as follows:]

Envelopes used as mailing containers must be able to be processed and delivered without damage to the contents or other mail. Envelopes made of extra-strength materials are necessary for items intended for processing on USPS parcel sorting equipment. Envelopes are acceptable only for easy loads of up to 5 pounds. Envelopes may be used for odd-shaped items, if the mailpiece meets the standards for that class of mail. Envelopes must be prepared according to these weight limits:

a. Up to 1 pound, flat nongusseted envelopes are acceptable for nonrigid stationery and similar material for mailpieces weighing no more than 1 pound and measuring no more than 1 inch thick.

b. Up to 5 pounds, larger or heavier envelopes are acceptable for mailpieces weighing more than 1 pound or measuring more than 1 inch thick. The envelopes must be made either from paper equivalent to 28-pound basis weight or greater, or from extra-strength materials with a Mullen strength of more than 90 pounds per square inch. Envelopes for photographic film or gusseted (three dimensional) envelopes are acceptable if made from paper equivalent to 24-pound basis weight or greater.

[Revise heading of new 3.8 to read as follows:]

3.8 Fiberboard Tubes and Similar Long Containers

[Revise new 3.8 by reorganizing text to read as follows:]

Fiberboard tubes and similar lengthy containers are acceptable if they meet these requirements:

a. The length must not exceed 10 times the girth.

b. The strength of the tube ends must be at least equal to the tube sidewall strength, unless the contents are lightweight, rolled items (*e.g.*, posters, charts). Sidewall strength is always equal to solid fiberboard 1/16 inch thick for tubes less than 18 inches long, 3/32 inch thick for tubes 18 to 32 inches long, and 5/32 inch thick for tubes more than 32 inches long.

c. Crimped or taped end closures are not acceptable for other than lightweight rolled items. Tape must completely encircle all seams when friction slide closures (end caps) are used.

3.9 Cans and Drums

[Revise 3.9 to read as follows:]

Cans and drums with positive closures (*e.g.*, clips) are acceptable. Friction closures alone are not acceptable. Protruding devices, such as locking rings, must be shielded by padding to prevent injury to USPS employees, and damage to equipment, or other mail.

[Redesignate current 4.0 as new 5.0, current 5.0 as new 6.0, and current 6.0 as new 4.0, and revise heading to read as follows:]

4.0 MAILING CONTAINERS—SPECIAL ENVELOPES

* * * * *

5.0 CUSHIONING

[Redesignate current 4.1 and 4.2 as new 5.2 and 5.3, respectively; add new 5.1 to read as follows:]

5.1 Acceptable Material

Acceptable cushioning material includes bubble wrap, corrugated fiberboard, foamed plastics, and loose-fill material such as excelsior, polystyrene, and shredded paper. Combinations of several types of cushioning (such as corrugated fiberboard pads and less dense, loose-fill material) are also acceptable and help dissipate shock and pressure.

5.2 Volume

[Revise new 5.2 to read as follows:]

Loose-fill cushioning must overfill the mailing container before closure to hold the item and prevent its movement to an inside surface of the container or to other items in the package. Shock and pressure forces must be dissipated over as much of the surface of the item as possible.

5.3 Several Items Within Container

[Revise new 5.3 to read as follows:]

When several items are inside a single mailing container, they must be protected from each other as well as from external forces. Concentrated heavy items must not be packed with fragile items unless extreme care is exercised to separate them from each other. Heavy items must be adequately stabilized.

6.0 CLOSURE, SEALING, AND REINFORCEMENT

[Revise and redesignate current 5.1, 5.2, and 5.3 as new 6.2; add new 6.1 to read as follows:]

6.1 General

Standards for closing, sealing, and reinforcing the outside of a mailing container depend on the load type (see 2.4) and the accetable material. Fragile items must be packed to withstand processing and transportation. The main materials for closing, sealing, and reinforcing mailing containers are adhesives, nonmetallic bandings (strappings), staples and steel stitching, and tapes (gummed and pressure-sensitive). Friction closures, screw caps, and locking devices are used to close and seal cans and similar containers.

6.2 Tapes

[Revise new 6.2 to read as follows:]

Cellophane tape, masking tape, and duct tape may not be used for closure or reinforcement of packages but may be used to improve adhesive closures on envelope flaps or to cover staples on mailing bags. Tape that may be used for closure or reinforcement must meet these standards:

a. Gummed paper (kraft) tape must meet these standards:

(1) Reinforced tape is acceptable for closing and reinforcing regular mailing containers, irregular-shaped parcels, and soft-wrapped parcels.

(2) Nonreinforced tape is acceptable only for closing mailing containers if the tape is at least of a 60-pound basis weight kraft.

(3) The adhesive on gummed tape must be adequately activated before application and firmly applied with the tape extending at least 3 inches over the adjoining side of the box. Gummed tape is applied correctly if it remains attached to the mailing container during handling and transportation and if its removal causes delamination or at least a 50% fiber tear on the surface to which the tape is applied.

b. Pressure-sensitive tape is acceptable for closing and reinforcing mailing containers. Except for pressure-sensitive filament tape, tape used for closure and reinforcement may not be less than 2 inches wide. Nonreinforced plastic tape must be at least as strong in the cross direction (width) as in the machine direction (length) of the tape.

[Redesignate current 5.4, 5.5, and 5.6 as new 6.3, 6.4, and 6.5, respectively.]

6.3 Adhesive

[Revise new 6.3 to read as follows:]

Adhesives for closure on box flaps or on tapes must remain serviceable from −20 degrees to +160 degrees Fahrenheit. Hot-melt adhesive may be used if at least four strips are applied on each part of the box flap where the outer flap overlays the inner flap; each strip is 3/16 inch wide after compression; the strips are not more than 1½ inches apart, with the first strip no more than ½ inch from the center seam; and all strips are the full width of the inner flap, unless hot-melt adhesive is applied to 25% of the area where the outer flap lies over the inner flap.

6.4 Banding

[Revise new 6.4 to read as follows:]

When banding is used for closure and reinforcement, it must snugly encircle the length and girth of the package at least once and be firmly applied to the point that the straps tighten until they depress the box at the edges. Twine, cord, metal strapping (banding), and loose strapping may not be used for closure and reinforcement.

6.5 Staples and Steel Stitching

[Revise 6.5 to read as follows:]

Staples and steel stitching are acceptable if placed not more than 1¼ inches from the ends of the box, and spaced not more than 5 inches apart for easy and average loads, and not more than 2½ inches apart for difficult loads. Boxes not meeting these requirements may be made acceptable by applying a strip of 3-inch-wide reinforced tape in the gap between the staples or by strapping to compensate for the gap in the staple closure. Improperly clinched staples used with reply (double) cards, envelopes, flats, or mailing bags are not acceptable.

* * * * *

[Revise heading of 8.0 to read as follows:]

8.0 PARCEL SORTING SYSTEMS STANDARDS

[Revise heading of 8.1 to read as follows:]

8.1 Books and Printed Material

[Revise 8.1 to read as follows:]

For packaging purposes only, these standards include books and printed material such as magazines, catalogs, and directories with 24 pages or more, fastened (bound) along one edge between hardback, paperback, or self-covers. Books or printed material measuring more than 1 inch thick or weighing more than 1 pound are not acceptable in flat nongusseted envelopes. Other envelopes meeting the standards in 3.7 must be used. Empty spaces within envelopes or other mailing containers must be filled with acceptable cushioning material or otherwise stabilized to prevent shifting, damage to the contents, and breakage to the envelope or other mailing container. Books and publications must be packed, closed, and sealed according to these weight categories:

a. Up to 5 pounds, in close-fitting paperboard or fiberboard boxes, padded or reinforced bags (exterior ply of at least 60-pound basis weight), or wraps (corrugated or at least 60-pound basis weight paper). Closure must be with multiple friction closures, completely clinched staples, heat-sealing, adhesives, tape, or banding. Although shrinkwrap is not acceptable as the sole packaging for hardback books exceeding 1 pound or 1 inch thick, shrinkwrap may be used on the exterior of otherwise acceptable mailing containers. Shrinkwrap at least 2 mils thick may be used as the sole method of packaging for paperback books up to 3 pounds.

b. From 5 to 10 pounds, in 175-pound test fiberboard boxes or equivalent containers. Closure must be with tape, banding, or adhesives. Reinforced tape or firmly applied banding is adequate for closure and reinforcement.

c. From 10 to 25 pounds, in 200-pound test fiberboard boxes or equivalent containers. Closure must be with tape, banding, or adhesives. Reinforced tape or firmly applied banding is adequate for closure and reinforcement.

d. From 25 to 50 pounds, hardbound publications in 275-pound test fiberboard boxes or equivalent containers, and paperback publications in 200-pound test fiberboard boxes or equivalent containers. Closure must be with tape, banding, or adhesives. Reinforced tape or firmly applied banding is adequate for closure and reinforcement.

e. From 50 to 70 pounds, hardbound books in 350-pound test fiberboard boxes or equivalent containers, and paperback books in 275-pound test fiberboard boxes or equivalent containers. Closure must be with tape, banding, or adhesives. Reinforced tape or firmly applied banding is adequate for closure and reinforcement.

8.2 High-Density Items

[Revise 8.2 to read as follows:]

High-density items (see 2.3) must be packed in fiberboard boxes constructed of a minimum specified test board or in containers of equivalent strength constructed of wood, metal, or plastic. Plastic, metal, and similar hard containers must be treated or otherwise prepared so that their coefficient of friction or ability to slide on a smooth, hard surface is similar to that of a domestic-class fiberboard box of the

same approximate size and weight. Boxes without inner packing or containing loose material must be reinforced with reinforced paper or plastic tape, pressure-sensitive filament tape, or banding tightened until the straps depress the carton at the edges. Internal blocking and bracing, including the use of interior containers, cut forms, partitions, cushioning material, and liners, must be used as required so that packages maintain their integrity without damage to the contents if dropped once on one of their smallest sides on a solid surface from a height of 3 feet. High-density items must be packed, closed, and sealed according to these weight categories:

a. Up to 20 pounds, 200-pound test fiberboard boxes or equivalent containers. Closure must be with staples, heat-shrinking, adhesives, or tape. Reinforced tape, pressure-sensitive filament tape, or banding is adequate for reinforcement.

b. From 20 to 35 pounds, 200-pound test fiberboard boxes or equivalent containers. Closure must be with staples, heat-shrinking, adhesives, or tape. Pressure-sensitive filament tape or banding is adequate for reinforcement.

c. From 35 to 70 pounds, 275-pound test fiberboard boxes or equivalent containers. Closure must be with staples, heat-shrinking, adhesives, or tape. Pressure-sensitive filament tape or banding is adequate for reinforcement.

8.3 Soft Goods

[Revise 8.3 to read as follows:]

Soft goods include clothing and any textile items such as sheets, blankets, pillows, draperies, and cloth. Soft goods may be packed in mailing bags or boxes. Soft goods intended for processing on USPS parcel sorting equipement must be in mailing containers made of extra-strength materials to ensure container integrity throughout processing. Closure of bags must be with completely clinched staples, heat-sealing, adhesives, stitching, or tape. Paper bags, plastic bags, or wraps must be secured to allow compression and prevent bursting during processing and transportation. Closure of boxes and similar mailing containers must be with staples, adhesive, heat sealing, banding, reinforced tape, or pressure-sensitive tape. Reinforced tape is adequate to close and reinforce bags and boxes. Shrinkwrapping is not acceptable as the only packaging. Soft goods must be packed, closed, and sealed according to these weight categories:

a. Up to 5 pounds, cloth bag, paper bag, paper wraps (with an exterior ply of at least 50-pound basis weight), plastic bag (at least 2 mils thick polyethylene or equivalent), or paperboard or fiberboard box.

b. From 5 to 10 pounds, cloth bag, paper bag, filament-reinforced paper bag, paper wraps (with an exterior ply of at least 70-pound basis weight), plastic bag (at least 4 mils thick polyethylene or equivalent), or paperboard or fiberboard box.

c. From 10 to 20 pounds, paper bag, paper wraps (with an exterior ply of at least 70-pound basis weight), reinforced paper bag, or 175-pound test fiberboard box or equivalent container

d. From 20 to 35 pounds, 200-pound test fiberboard box or equivalent container. Closure must be with staples, heat-shrinking, adhesives, or tape. Pressure-sensitive filament tape or banding is adequate for reinforcement.

e. From 35 to 70 pounds, 275-pound test fiberboard box or equivalent container. Closure must be with staples, heat-shrinking, adhesives, or tape. Pressure-sensitive filament tape or banding is adequate for reinforcement.

[Revise heading of 8.4 to read as follows:]

8.4 Records and Compact Discs

[Revise 8.4 to read as follows:]

Audio and video records and compact discs, (and paper sleeves, paperboard or chipboard shells, or plastic cases) must be packed, closed, and sealed according to these weight categories:

a. Up to 10 pounds, individual or multiple shell in 70-pound basis weight envelopes for shipments up to 3 pounds, or outer corrugated, fiberboard containers for shipments up to 10 pounds. Closure and reinforcement must be with adhesives, kraft paper tape, equivalent plastic tape, or staples.

b. From 10 to 20 pounds, multiple shell containers in 125-pound test fiberboard boxes or equivalent containers. Closure must be with adhesives, kraft paper tape, equivalent plastic tape, or staples. Reinforced tape, pressure-sensitive filament tape, or banding is adequate for reinforcement. Reinforced tape is adequate for closure and reinforcement.

c. From 20 to 35 pounds, multiple shell containers in 175-pound test fiberboard boxes or equivalent containers. Closure and reinforcement must be with adhesives, kraft paper tape, equivalent plastic tape, or staples.

d. From 35 to 70 pounds, multiple shell containers in 200-pound test fiberboard boxes or equivalent containers (for shipments weighing 35 to 65 pounds) or in 275-pound test fiberboard boxes or equivalent containers (for shipments weighing more than 65 pounds). Reinforced tape, pressure-sensitive filament tape, or banding is adequate for reinforcement. Reinforcement must be placed about every 8 inches around the container.

8.5 Magnetic Tapes

[Revise 8.5 to read as follows:]

A single tape or cartridge (*e.g.*, audio or video) may be packed in plastic film wrap (at least 0.75 mil thick) or in cushioned bags, or cushioned and packed in paper bags with a 60-pound minimum basis weight. Shrinkwrapping is acceptable on the exterior of otherwise acceptable boxes of multiple tape shipments. Shipments of multiple magnetic tapes and cartridges must be packed and sealed according to these weight categories:

a. Up to 5 pounds, in 125-pound test fiberboard boxes or equivalent containers. Closure must be with multiple friction closures, completely clinched staples, heat-shrinking or adhesives, or tape. Paper tape must be at least 60-pound basis weight kraft.

b. From 5 to 20 pounds, in 125-pound test fiberboard boxes or equivalent containers. Closure must be with adhesives, kraft paper tape, equivalent plastic tape, or staples.

c. From 20 to 35 pounds, in 175-pound test fiberboard boxes or equivalent containers that are banded or reinforced at two points with reinforced paper or plastic tape, pressure-sensitive filament tape, or firmly applied banding. Closure and reinforcement must be with adhesives, kraft paper tape, equivalent plastic tape, or staples.

d. From 35 to 70 pounds, in 200-pound test fiberboard boxes or equivalent containers (for shipments weighing 35 to 65 pounds) or in 275-pound test fiberboard boxes or equivalent containers (for shipments weighing more than 65 pounds). Closure and reinforcement must be with adhesives, kraft paper tape, equivalent plastic tape, or staples. Reinforcement must be placed about every 8 inches around the container.

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C020 Restricted or Nonmailable Articles and Substances

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C022 Perishables

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3.0 LIVE ANIMALS

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3.5 Adult Chickens

[Change in second sentence "(detailed in Publication 2, Packaging for Mailing)" to "(see G043 for address)."]

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G General Information

G000 The USPS and Mailing Standards

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G040 Information Resources

* * * * *

G043 Address List for Correspondence

* * * * *

OTHER

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[Add address to read as follows:]

International Safe Transit Association, 1400 Abbott Rd Ste 160, East Lansing MI 48823–1900, *http://www.ista.org.*

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M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

M041 General Standards

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5.0 PREPARATION

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5.6 Mail on Pallets

These standards apply to mail on pallets:

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[Add new 5.6j to read as follows:]

j. High-density parcels (see C010) weighing 25 to 35 pounds must not be placed on the same pallet with machinable parcels.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney.

[FR Doc. 04–4212 Filed 2–25–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI84–01; FRL–7627–1]

Approval and Promulgation of Implementation Plans: Michigan: Oxides of Nitrogen Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Michigan on April 3, 2003. The submittal made by the Michigan Department of Environmental Quality (MDEQ) responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The rules submitted by MDEQ establish and require nitrogen oxides (NO_X) emissions reductions through an allowance trading program for large electric generating and industrial units, and reductions from cement kilns, beginning in 2004. The intended effect of the regulations submitted by MDEQ is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. We are proposing to conditionally approve Michigan's Oxides of Nitrogen Budget Trading Program because it generally meets the requirements of the Phase I NO_X SIP Call that will significantly reduce ozone in Michigan and ozone transport in the eastern United States. We deemed the submittal as administratively and technically complete in a letter of completeness sent to MDEQ on April 24, 2003.

DATES: We must receive written comments on or before March 29, 2004.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please contact Douglas Aburano at (312) 353–6960 or *aburano.douglas@epa.gov* before visiting the Region 5 Office.

Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the term "you" refers to the reader of this rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refer to EPA.

On April 3, 2003, MDEQ submitted a NO_X emission control plan to the EPA for inclusion in Michigan's SIP to meet the requirements of the Phase I NO_X SIP Call. The revisions generally comply with the requirements of the Phase I NO_X SIP Call. Included in this document are Michigan Rules 802 through 817. The information in this proposed conditional approval is organized as follows:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. We have established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI84". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public

rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MI84" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *bortzer.jay@epa.gov*. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI84" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI84" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. What Is EPA Proposing Today?

EPA is proposing to conditionally approve revisions to Michigan's SIP concerning the adoption of its NO_X Rules, submitted on April 3, 2003. The rules meet the requirements of the Phase I NO_X SIP Call with certain exceptions. MDEQ is in the process of adopting rules to correct these deficiencies. Once MDEQ has submitted the rule changes to address these deficiencies, we can take action to fully approve the SIP revision.

B. What Are the NO_X SIP Call General Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the

Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." *See* 63 FR 57356. The NO_X SIP Call requires 22 states and the District of Columbia to meet NO_X emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. As the result of court actions, the compliance date for the first year has been changed to May 31, 2004 and the NO_X SIP Call has been divided into two phases.

EPA identified NO_X emission reductions by source category that could be achieved by using highly cost-effective measures. The source categories included were large electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion (IC) engines and cement kilns. EPA derived state-wide NO_X emission budgets based on the implementation of these highly cost-effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by Michigan in this submittal which responds to Phase I, but will be addressed in a response to EPA's Phase II requirements. The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_X SIP Call notice, EPA suggested that a cap and trade program for EGUs (fossil-fuel fired electric generating boilers and turbines serving a generator greater than 25 MW) and non-EGUs (large fossil-fuel fired industrial boilers and turbines) would provide a highly cost-effective means for states to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand (*See* 63 FR 57407). The NO_X SIP Call State budgets also assume a 30 percent NO_X reduction from cement kilns, and a 60 percent reduction from non-EGUs. The non-EGU control assumptions were applied at units whose maximum design heat input was greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. Phase I budgets did not include reductions from IC engines. EPA's Phase II NO_X SIP Call will address reductions from these sources.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X cap and trade regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA (*See* 63 FR 57458–57459).

There were several periods during which EPA received comments on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). On March 3, 2000, the DC Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). The DC Circuit denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: The definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO_X SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups and a number of upwind states from the DC Circuit's ruling on EPA's NO_X SIP Call rule.

On April 11, 2000, in response to the Court's decision, EPA notified Michigan of the maximum amount of NO_X emissions allowed for the State during the ozone season. This emission budget reflected adjustments to Michigan's NO_X emission budget to reflect the Court's decision that Georgia and Missouri should not be included in full. Although the Court did not order EPA to modify Michigan's budget, the EPA believes these adjustments are consistent with the Court's decision.

On February 22, 2002 (67 FR 8396), EPA published a proposal that addresses the remanded portion of the NO_X SIP Call Rule. Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget.

C. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth an NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998, **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program (*See* 63 FR 57514–57538 and 40 CFR part 96).

Air emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while achieving emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions cap and trade program, the state or EPA sets a regulatory limit, or emissions budget or cap, for total mass emissions from a specific group of sources. The budget limits the total number of allowances for all sources covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each affected source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell or bank their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met and in the most cost-effective manner.

D. EPA's Section 126 Rule in Michigan

In a rulemaking separate from the NO_X SIP Call, EPA placed requirements directly on sources in Michigan, and many other states in the eastern half of the country, to reduce NO_X emissions that adversely affect downwind areas in other states. This rule is known as EPA's Section 126 Rule (65 FR 2764). The Section 126 Rule is similar to the NO_X SIP Call in that it is designed to address

the problem of downwind transport and many of the sources that would be affected by states' NO_X SIPs are also affected by the Section 126 Rule. The sources that are required to reduce emissions under the Section 126 Rule are EGUs (units serving a generator with nameplate capacity greater than 25 MW) and non-EGUs (units with maximum design heat input greater than 250 mmBtu/hr). These rules are different in that the NO_X SIP Call is a requirement placed upon states to develop rules that will reduce NO_X emissions but it is up to the state to determine what sources to control.

EPA issued the Section 126 rulemaking based on petitions filed by eight Northeastern States seeking to mitigate interstate transport of NO_X. These petitions requested EPA to require NO_X reductions from specific upwind NO_X sources or source categories. EPA based its section 126 findings on the same technical work that was used in the NO_X SIP Call.

E. What Guidance Did EPA Use To Evaluate Michigan's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation (*See* 40 CFR part 96). EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Michigan's Oxides of Nitrogen Budget Trading Program for EGUs and non-EGUs. A cement kiln rule was included as part of a Federal Implementation Plan (FIP) that EPA proposed on October 28, 1998 (See 63 FR 56393). We used this proposed FIP cement kiln rule to evaluate Michigan's cement kiln rule.

F. What Is the Result of EPA's Evaluation of Michigan's Program?

EPA has evaluated Michigan's April 3, 2003, SIP submittal and finds the majority of it approvable. The Michigan Oxides of Nitrogen Budget Trading Program is basically consistent with EPA's guidance and almost meets all of the requirements of the Phase I NO_X SIP Call. EPA finds the NO_X control measures in the Michigan's Oxides of Nitrogen Budget Trading Program generally approvable. If it becomes fully approved, the April 3, 2003, submittal will strengthen Michigan's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004. EPA finds that the submittal contained the information necessary to demonstrate that Michigan has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

We identified certain deficiencies during our review but because MDEQ has been made aware of these problems and is currently in the process of addressing them, we are proposing to conditionally approve the submittal made by MDEQ on April 3, 2003. MDEQ requested this conditional approval of its April 2003 submittal in a letter dated January 9, 2004. In this letter, MDEQ has committed to submit fully adopted rules addressing the identified deficiencies by May 31, 2004. Upon receipt of these newly adopted rules eliminating all deficiencies, we can take action to fully approve Michigan's NO_X SIP.

G. NO_X Allowance Allocations

Because the vast majority of the SIP submitted by MDEQ has been found approvable by EPA and because MDEQ has committed to address the deficiencies identified by EPA, by no later than May 31, 2004, EPA will allocate NO_X allowances to the affected sources in Michigan per the allocation methodology found in the Michigan SIP after finalization of this conditional approval.

H. NO_X Budget Permits

State rules currently require the MDEQ to issue NO_X Budget permits. Following EPA's final conditional approval of the Michigan NO_X Rules into the Michigan SIP, the terms of any NO_X Budget permit issued under the SIP-approved program are federally enforceable pursuant to the SIP.

I. What Deficiencies Must Be Addressed by MDEQ?

In the review of Michigan's NO_X SIP, EPA identified six deficiencies that need to be corrected before these rules can be fully approved. These deficiencies have been communicated to MDEQ and now, MDEQ is in the process of changing its rules to address these problems.

Following is a list of the identified deficiencies:

1. Rule 802(5) states, "An oxides of nitrogen budget unit that is subject to a rule promulgated under section 126 of the Clean Air Act shall not be subject to this rule until the section 126 requirements no longer apply." Under this language, those oxides of nitrogen budget units that are subject to the Section 126 Rule and that would be subject to controls under the Michigan SIP are not covered by the SIP. The Section 126 Rule remains in place and will remain effective until EPA approves the Michigan SIP. The EPA cannot approve the Michigan SIP, and move forward to remove the Section 126 requirements, unless the SIP has in place regulations to achieve the necessary emissions reductions to meet the Phase I budget. In evaluating the SIP, EPA cannot take into consideration the emissions reductions required by the Section 126 Rule. Because the Section 126 Rule would still be in place at the time EPA takes action on the Michigan SIP, oxides of nitrogen budget units that would otherwise be subject to controls under the Michigan SIP would not be covered at that time. Therefore, the SIP would not be providing sufficient emissions reductions to meet the Phase I budget and would not be approvable. This language must be removed from the State's rules. EPA will then take action to ensure that no unit is subject to both trading programs.

2. The applicability of these rules is based on named counties in the southern portion of Michigan. While this applicability is sufficient to meet the requirements found in the SIP Call, it is not enough to remove all of the Section 126 requirements from the State. This is because there is one source, Detroit Edison's Harbor Beach unit, that is affected by Section 126 requirements, but is not in one of the counties affected by Michigan's NO_X SIP call rule. Michigan has indicated a desire to include the Harbor Beach unit in the trading program in order to satisfy the Section 126 requirements for this source. To address this situation and enable EPA to remove all of the Section 126 requirements from Michigan after the Michigan NO_X SIP has been approved, MDEQ must extend the applicability of the Michigan NO_X SIP to that one source.

3. Twenty-five ton exemption—States may develop alternative 25-ton NO_X exemptions to the one included in the model rule provided they are based on permit restrictions that limit a unit's potential to emit during an ozone season to 25 tons or less and are not inconsistent with 40 CFR part 75 monitoring requirements. Michigan's regulation, Part 8. Emissions Limitations and Prohibitions—Oxides of Nitrogen, includes in Rule 802(2) the 25-ton exemption. The rule language is based on the model rule but provides additional options for qualifying for the exemption that involve emission monitoring or testing that is inconsistent with part 75.

In addition, when a unit receives a 25-ton exemption, the unit's potential emissions (reflected as an equivalent number of allowances) must be removed

from the trading budget to avoid double counting. An exempt unit's emissions are included in the state's large EGU or large non-EGU emissions budget and therefore as allowances in the state's trading budget. EPA is concerned that Michigan's rule does not account for potential emissions from the exempt units. Neither the rule nor the SIP submittal specifies a procedure for removing from the trading budget the allowances reflecting the exempt unit's potential emissions. To address the deficiencies related to the 25-ton exemption provisions including the related budget adjustments, Michigan must modify its regulations to ensure an exempt source's emissions are less than 25 tons in each ozone season and provide a process for adjusting the trading budget accordingly. EPA provided MDEQ suggested language modifying the regulations.

4. New source set-aside—The new source set-aside provisions of § 811(1)(a) specify the set-aside pool allocation. The rule contains a typographical error regarding the number of allowances to be set-aside after 2006. A footnote in the Michigan SIP submittal highlights this error and indicates the correct number. This error should be corrected since the official regulations are the basis for all allocations. Also, Section 811(2) appears to address the issue of adjusting a new source's allowances to account for reduced utilization, but is incomplete and, for example, lacks the adjustment formula. This section also appears to specify how remaining set-aside allowances are determined, but that matter is also addressed in Section 811(3). Michigan must clarify these provisions. EPA provided MDEQ suggested language to clarify these provisions.

5. Language in § 802(1)(a) appears to allow the State to exempt an EGU for which applicability has not been determined. EPA cannot approve any exemption that is solely at the discretion of the State and does include EPA approval as well. The language relating to exemptions based solely on the State's discretion must be removed as a condition of final approval.

6. Language in § 804 relating to retired unit exemptions must be modified to include the requirement that a unit that qualifies for this exemption, is not required to have a permit, and subsequently resumes operation will lose the exemption at the time of resumption of operation. EPA provided MDEQ suggested language modifying this section of the regulations.

J. What Happens if MDEQ Fails To Address These Deficiencies?

In a letter dated, January 9, 2004, MDEQ committed to submit fully adopted rules addressing the deficiencies by May 31, 2004. If a submittal is not made by this date, this conditional approval will automatically revert to a disapproval of the Michigan NO_X SIP.

III. Michigan's Control of NO_X Emissions

A. When Did Michigan Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On April 3, 2003, MDEQ submitted a final revision to its SIP to meet the requirements of the Phase I NO_X SIP Call.

B. When Did Michigan Hold Public Hearings and What Were the Results?

Public hearings were held on December 3, 2001 and January 22, 2003. MDEQ holds public hearings on rules at the end of a 30-day public comment period. MDEQ either modified its rules to accommodate the comments received or explained why the rules were not changed in light of the comments.

C. What Is Included in Michigan's NO_X SIP Call Revision?

Michigan allows, as in the model rule, EGUs and non-EGUs to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln firing system or technology that achieves the same emission decreases (a 30% reduction). Michigan's SIP revision to meet the requirements of the NO_X SIP Call consists of the revision of Michigan Rules 802 through 817. The regulations 802 through 816 affect EGUs and non-EGUs. Rule 817 applies requirements to cement manufacturing facilities.

Michigan's SIP revision to meet the requirements of the NO_X SIP Call consists of the following Michigan Rules:

- 802 Applicability under oxides of nitrogen budget trading program
- 803 Definitions for oxides of nitrogen budget trading program
- 804 Retired unit exemption from oxides of nitrogen budget trading program
- 805 Standard requirements of oxides of nitrogen budget trading program
- 806 Computation of time under oxides of nitrogen budget trading program
- 807 Authorized account representative under oxides of nitrogen budget trading program
- 808 Permit requirements under oxides of nitrogen budget trading program
- 809 Compliance certification under oxides of nitrogen budget trading program
- 810 Allowance allocations under oxides of nitrogen budget trading program
- 811 New source set-aside under oxides of nitrogen budget trading program
- 812 Allowance tracking system and transfers under oxides of nitrogen budget trading program
- 813 Monitoring and reporting requirements under oxides of nitrogen budget trading
- 814 Individual opt-ins under oxides of nitrogen budget trading program
- 815 Allowance banking under oxides of nitrogen budget trading program
- 816 Compliance supplement pool under oxides of nitrogen budget trading program
- 817 Emission limitations and restrictions for Portland cement kilns

Michigan's Oxides of Nitrogen Budget Trading Program (Rules 802 through 816) establishes and requires a NO_X allowance trading program for large EGUs and non-EGUs. These rules establish a NO_X cap and allowance trading program for the ozone control seasons beginning May 31, 2004. Michigan Rule 817, not part of the trading program, applies to cement kilns and also requires control during the ozone season starting on May 31, 2004. Beginning in 2005, the ozone control period is May 1 through September 30.

The State of Michigan voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for EGUs and non-EGUs. Michigan's Oxides of Nitrogen Budget Trading Program is based upon EPA's model rule, therefore, Michigan sources are allowed to participate in the interstate NO_X allowance trading program that EPA is administering for the participating states. The State of Michigan has adopted regulations that, revised consistent with the conditions noted above, are substantively identical to 40 CFR part 96. Therefore, with the conditions noted, pursuant to 40 CFR 51.121(p)(1), Michigan's SIP revision is being proposed for a conditional approval as satisfying the State's NO_X emission reduction obligations. Under Rule 810, Michigan allocates NO_X allowances to the EGU and non-EGU units that are affected by these requirements. The NO_X trading program applies to EGUs (fossil fuel fired boilers

and turbines serving a generator with a nameplate capacity greater than 25 MW or more that sell any amount of electricity) as well as non-EGUs (industrial boilers and turbines that have a maximum design heat input greater than 250 mmBtu per hour). Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations.

Source owners will monitor and report their NO_X emissions by using methodologies that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

Michigan's Oxides of Nitrogen Budget Trading Program establishes requirements for cement manufacturing facilities, however, these sources are subject to NO_X reduction requirements but do not participate in the NO_X trading program. Michigan's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

Michigan's submittal demonstrates that the Phase I NO_X emission budgets established by EPA will be met because MDEQ agrees with all of the assumptions, projections, etc. used by EPA to determine the 2007 budgets. Because Michigan has adopted all of the same controls assumed by EPA in developing the State's NO_X budget, the actual emissions in 2007 should be the same as those EPA has projected to be the State's 2007 budget.

D. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable otherwise to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_X SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999, but before May 31, 2004 (*i.e.*, early reductions). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available (*See* 40 CFR 51.121(e)(3)). Michigan has opted to issue the State's compliance supplement pool through the Early Reduction Credit program only.

E. How Does Michigan's NO_X SIP Affect Sources Subject to EPA's Section 126 Rule in the SIP Call Area?

All of the existing sources in the SIP Call area that are subject to EPA's Section 126 Rule are also subject to Michigan's NO_X rules. There is, however, one Section 126 affected source that falls outside of the SIP Call affected area. This source is Detroit Edison's Harbor Beach unit and it is located in Huron County. While Huron County falls outside of the area covered by the Michigan's NO_X SIP rules, MDEQ is in the process of modifying the applicability of the NO_X Rules to include this one source. Detroit Edison requested inclusion of the Harbor Beach unit in the State trading program because it would then be able to take advantage of the trading provisions that are not otherwise available. Since Michigan adopted the same applicability thresholds for EGU and non-EGU sources as those found in EPA's Section 126 Rule, all of the same sources will be covered once MDEQ has adopted rules to include the Harbor Beach unit. The Michigan trading budget was not increased as a result of adding the Harbor Beach unit.

IV. EPA Proposal

EPA is proposing to conditionally approve the Michigan's SIP revision consisting of its Oxides of Nitrogen Budget Trading Program and its rule that affects cement kilns, which was submitted on April 3, 2003. EPA finds that Michigan's submittal is conditionally approvable because it meets the requirements of the Phase I NO_X SIP Call with some exceptions.

V. Statutory and Executive Order Reviews.

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state regulations as meeting Federal requirements and imposes no additional requirements beyond those imposed by state regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children from Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 17, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–4253 Filed 2–25–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Proposed Rule To Designate Critical Habitat for the Santa Ana Sucker (*Catostomus santaanae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Santa Ana sucker (*Catostomus santaanae*) pursuant to the Endangered Species Act of 1973, as amended (Act). This threatened species is now restricted to three noncontiguous populations in three different stream systems in southern California: The lower and middle Santa Ana River in San Bernardino, Riverside, and Orange counties; the East, West, and North Forks of the San Gabriel River in Los Angeles County; and lower Big Tujunga Creek in Los Angeles County. When final, this rulemaking would replace the critical habitat designation for Santa Ana sucker as promulgated today by a rule that amends 50 CFR 17.11(h) and 17.95(e).

DATES: We will accept comments from all interested parties until April 26, 2004. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by April 12, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone 760/431–9440 or facsimile 760/431–9618).

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

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

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

3. You may send comments by electronic mail (e-mail) to *fw1sasu@r1.fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the address listed above (telephone 760/431–9440 or facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit your comments on the proposed designation of critical habitat for the Santa Ana sucker. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Santa Ana sucker habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the

proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this rule by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1sasu@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Santa Ana Sucker Critical Habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

The Santa Ana sucker was listed as a threatened species under the Act on April 12, 2000 (65 FR 19686). On March 19, 2002, California Trout, Inc., the California-Nevada Chapter of the American Fisheries Society, the Center for Biological Diversity, and the Friends of the River filed a complaint for declaratory and injunctive relief with the U.S. District Court for the Northern District of California. (*California Trout* v. *DOI*, No. 97–3779 (N.D.Cal.)). On February 26, 2003, the district court held that the Service had failed to designate critical habitat for the listed populations of Santa Ana sucker within the statutory timeframe and ordered the Service to complete a final critical habitat designation for the Santa Ana sucker by February 21, 2004. The court further enjoined the Service from issuing any section 7 concurrence or biological opinion on a proposed Federal action that "may affect" the Santa Ana sucker until completion of the designation.

A final rule to designate critical habitat for the Santa Ana sucker is published in the Rules and Regulations section of this issue of the **Federal Register**. In order to comply with the designation deadline established by the district court, we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. However, we fully recognize the value and importance of public input in developing a critical habitat designation for the Santa Ana Sucker. Therefore, in order to allow members of the public an opportunity to comment on the critical habitat designation for the Santa Ana sucker, and to enable the Service to seek peer review of such designation and to complete and circulate for public review an economic analysis of critical habitat designation, we are publishing and soliciting comment on this proposed rule. The amendments made to 17.11(h) and 17.95(e) in the final critical habitat rule published elsewhere in this issue of the **Federal Register** are the same as the amendments we are proposing in this proposed rule. In addition, the **SUPPLEMENTARY INFORMATION** for that final rule is the same as the **SUPPLEMENTARY INFORMATION** for this proposed rule. Because this proposed critical habitat rule incorporates by reference the substance of the final rule, please refer to the final rule in formulating your comments on this proposal. At the conclusion of this rulemaking process we will determine whether the final critical habitat rule for the Santa Ana sucker separately published in this issue of the **Federal Register** should be replaced with a new final rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the Santa Ana sucker will be prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. We specifically solicit public comment on exclusion under section 4(b)(2) of the Act of lands included within the Western Riverside Multi-Species Habitat Conservation Plan (MSHCP) and lands included within the Santa Ana Sucker Conservation Program on the Santa Ana River. When completed, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has not reviewed this proposed critical habitat designation in accordance with Executive Order 12866. In order to comply with the critical habitat designation deadline established by the district court, there was insufficient time for OMB to formally review this proposal.

We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the proposed areas as critical habitat.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, or any activity funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and,

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. The SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

If this critical habitat designation is finalized, Federal agencies must consult with us if their activities may affect designated critical habitat. Measures to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Since the Santa Ana sucker was listed (2000), we have conducted approximately seven formal consultations involving this species. These formal consultations included: an intra-Service study investigating the effects of temporary cessation of water discharge on the sucker, flood control improvements in Reach 8 and 9 of the Santa Ana River, flood control improvements in Prado Basin, the operation of Prado Dam for water conservation, emergency sand mining activity to maintain safety of a bridge, the widening of Interstate 71, and a programmatic consultation for the Angeles National Forest. These consultations resulted in non-jeopardy biological opinions.

We also conducted approximately five informal consultations since this species was listed. These informal consultations concerned activities such as: A seismic retrofit of six bridges, removal of nonnative vegetation, maintaining sewer line manholes and access, and continued use of recreational residences in the Angeles National Forest. Informal consultations regarding the Santa Ana sucker usually resulted in recommendations to employ erosion control measures, conduct certain activities by hand, conduct activities outside of spawning season, implement best management practices to avoid spilling hazardous materials, and avoidance of habitat, and resulted in little to no modification of the proposed activities. In reviewing these past informal consultations and the activities involved in light of proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. Future consultations are not likely to affect a substantial number of small entities. We have no indication that the types of activities we review under section 7 of the Act will change significantly in the future. Given that a large part of the critical habitat designation overlaps with already designated critical habitat (*i.e.*, least Bell's vireo, southwestern willow flycatcher, San Bernardino kangaroo rat), or occupied habitat for other species (mountain yellow-legged frog, slender-horn spineflower, and woolly-star), we would expect no more than 1 additional section 7 consultation per year resulting from this rule as certain of the proposed critical habitat units are currently unoccupied by Santa Ana suckers. These consultations would likely address bridge widening, seismic retrofits of bridges, water diversion, water conservation, pipeline construction, post-fire actions, and fuel modification.

This rule would result in major project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. Based on our experience in consultations involving designated critical habitat for other listed species, we are almost always able to work with the Federal action agency, and non-Federal applicant, if any, to incorporate minor changes into a proposed project to avoid adverse modification of critical habitat and enable the project to go forward. While it is possible that major modifications to a proposed action might be necessary to avoid adverse modification of critical habitat, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for the Santa Ana sucker will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Our determination is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et. seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. As previously discussed, we have excluded critical habitat from private lands within the draft Western Riverside MSHCP and the SAS Conservation Program under section 4(b)(2) of the Act. The exclusion of these private lands and the activities associated with the draft Western Riverside MSHCP and SAS Conservation Program eliminates the potential for critical habitat in these excluded areas to have any effect on the increase in costs or prices for consumers or any significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Moreover, approximately 48 percent of the designated critical habitat is on Forest Service lands that are not intensively used for commercial or business purposes and we anticipate that the designation will have little to no effect on costs or prices for consumers or any other significant commercial or business related activities. The remaining 52 percent of designated critical habitat that occurs on private lands is constrained by other existing conditions, such as being within wetlands regulated by the U.S. Army Corps of Engineers, floodplains identified by FEMA, or by the presence of listed species or other designated critical habitat. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Santa Ana sucker is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not "significantly or uniquely" affect small governments so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Santa Ana sucker in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat for the Santa Ana sucker does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have Federalism implications or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A Federalism assessment is not required.

The designations may have some benefit to the State of California and local government, in that the areas essential to the conservation of the Santa Ana sucker are more clearly defined, and the primary constituent elements of the habitat necessary to their survival are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than causing them to wait for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Santa Ana sucker.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Santa Ana sucker. Therefore, critical habitat for the Santa Ana sucker has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Rule Promulgation

For the reasons set out in the preamble, we propose to amend 50 CFR 17.11(h) and 17.95(e) to designate critical habitat for the Santa Ana sucker. The text of the proposed amendments is identical to the text of the final rule amendments made to 17.11(h) and 17.95(e) for the Santa Ana sucker, published elsewhere in this issue of the **Federal Register**.

Dated: February 20, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–4226 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040210050–4050–01; I.D. 011204A]

RIN 0648–AN16

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). Amendment 10 proposes a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Areas would be defined and would be closed and re-opened to fishing on a rotational basis, depending on the condition and size of the scallop resource in the areas. Amendment 10 evaluates and proposes measures to minimize the adverse effects of fishing on Essential Fish Habitat (EFH). Amendment 10 also proposes days-at-sea (DAS) allocations consistent with the current status of the resource, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on March 29, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 10 to the Scallop FMP." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments submitted via e-mail or internet should be sent to *ScallopAN16@noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of Amendment 10, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the draft Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135; e-mail *peter.christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Amendment 10 was developed by the Council over a period of more than 3 years. The primary management measure included in Amendment 10 is the proposed area rotation management program, which is designed to improve yield from the scallop resource by defining areas to be closed and re-opened based on the condition and size of the scallop resource. Amendment 10 evaluates and proposes measures to minimize the adverse effects of fishing on EFH, in accordance with the Joint Stipulation and Order resulting from the legal challenge *American Oceans Campaign et al.* v. *Evans et al.* (Civil Case Number 99–982 (GK)) (Joint Stipulation and Order). Amendment 10 also proposes days-at-sea (DAS) allocations consistent with the current status of the resource, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible.

Area-based management was first used for the scallop resource in 1998, when NMFS, in consultation with the Council, implemented an interim rule to close two areas in the Mid-Atlantic (MA) to scallop fishing (March 31, 1998, 63 FR 15324). These areas, the Hudson Canyon South and Virginia Beach areas, were closed to protect an abundance of small scallops that would have been vulnerable to excessive mortality if left unprotected. On March 29, 1999,

Amendment 7 to the FMP (March 29, 1999, 64 FR 14835) extended the closures until March 1, 2001, to allow scallops within the areas to grow and spawn.

On June 10, 1999, NMFS and the Council expanded the use of area-based management in the scallop fishery by implementing Framework 11 to the FMP and Framework 29 to the Northeast Multispecies FMP (NE Multispecies FMP)(Frameworks 11/29) (64 FR 31144) to authorize scallop vessels to fish within Groundfish Closed Area II (CAII) on Georges Bank (GB). On June 19, 2000, with the implementation of Framework 13 to the FMP and Framework 34 to the NE Multispecies FMP (Frameworks 13/34) (65 FR 37903), area-based management for the scallop fishery was further expanded. Frameworks 13/34 allowed access by the scallop fishery to Groundfish CAI and II on GB and the Nantucket Lightship Closed Area (NLCA) in southern New England. In both Frameworks 11/29 and Frameworks 13/34, these areas, closed to protect groundfish species managed under the NE Multispecies FMP, were found to have high concentrations of large scallops that would support a controlled fishery for scallops with only minimal bycatch of groundfish.

Frameworks 14 (66 FR 24052, May 1, 2001) and 15 (68 FR 9580, February 28, 2003), to the FMP implemented on May 1, 2001, and March 1, 2003, respectively, included area-based controlled harvest strategies for the Hudson Canyon and Virginia Beach areas similar to the programs established within the groundfish closed areas. The MA scallop closed areas were reopened to controlled scallop fishing by these actions because the area closure had provided sufficient time for the protected scallop resource within the areas to grow to a size more suitable for harvest. These recent area-based management actions for the scallop fishery provided the Council with valuable information and experience in area-based management for the scallop fishery, which it relied upon in the development of Amendment 10.

Amendment 10 was also developed by the Council to minimize the adverse effects of fishing on EFH. Consistent with the EFH Joint Stipulation and Order, Amendment 10 evaluates the impacts of fishing on EFH and proposes management measures designed to minimize the adverse effects of scallop fishing on EFH, to the extent practicable.

A notice of availability for the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment 10 was published in the **Federal Register** on April 18, 2003 (68 FR 19206). The public was given 90 days to comment on the DSEIS, in accordance with the EFH Joint Stipulation and Order. After considering all comments on the DSEIS, the Council adopted the final measures to be included in Amendment 10 at its August 13–14, and September 16–17, 2003, meetings. The Council submitted the final Amendment 10 document to NMFS in December 2003.

A notice of availability for Amendment 10 was published in the **Federal Register** at 69 FR 2561 on January 16, 2004. The comment period on Amendment 10 in terms of its approvability under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) ends on March 15, 2004.

Measures of Particular Concern

NMFS is highlighting the following five measures included in Amendment 10, due to concern relating to implementation and timing: Scallop fishing access in the groundfish closed areas; cooperative industry surveys; the increase in the minimum ring size; implementation of an observer set-aside program; and the title of the proposed MA closed area. NMFS's concern with these measures is described below. While NMFS only raises the groundfish access issue for public awareness, NMFS seeks specific public input on the remaining four measures of concern. The measures are described in full in the "Proposed Measures" section of this preamble.

1. Scallop Fishing Access in Groundfish Closed Areas

Amendment 10 would allow scallop vessels to fish within the groundfish closed areas (CAI, CAII, and the NLCA), pending action under the Northeast (NE) Multispecies FMP, because a high percentage of the scallop biomass at harvestable size is within the boundaries of those areas. If vessels are allowed to harvest the scallops within the closed areas, Amendment 10 projects that the yield from the scallop fishery could be improved significantly, boosting both short-term and long-term benefits to the resource and the industry. Without access, the potential benefits would be lost, particularly in the long-term.

Although Amendment 10 contemplates access to the three groundfish closed areas, it is not possible to enact the access program for those areas through this action. Complementary action must be taken under the NE Multispecies FMP, to authorize access because those areas were closed by the NE Multispecies FMP to protect groundfish. Therefore, access to the groundfish closed areas will be considered in a separate joint framework action, Framework 16 to the FMP and Framework 39 to the NE Multispecies FMP (the Joint Framework), and these proposed regulations do not enact the access program in the groundfish closed areas.

DAS allocations could also be impacted, depending on whether or not the Joint Framework is implemented. Upon implementation of Amendment 10, DAS would be 42, 17, and 4 for Full-time, Part-time and Occasional vessels, respectively. Amendment 10 proposes that if the Joint Framework is not approved and a final rule allowing access to the groundfish closed areas is not published by August 15, 2004, the DAS for the 2004 fishing year will increase by 20, 8, and 1 DAS for Full-time, Part-time, and Occasional vessels, respectively. A delay of action on the Joint Framework until after August 15, 2004, would likely delay potential access to the three groundfish closed areas until the 2005 scallop fishing year (March 1, 2005,through February 28, 2006).

2. Cooperative Industry Surveys

NMFS notes its concerns about the Council's proposal to establish a cooperative industry scallop survey in support of area rotation. The proposed measure is intended as an important tool for the fully adaptive area rotation scheme proposed in Amendment 10. However, Amendment 10 specifies no details of the cooperative scallop survey regarding the vessels that would be used, the survey design and timing, and issues of survey standardization. New information about the scallop resource, presumably through the cooperative industry surveys, would need to be available to the Council in the early spring of 2005 in order to be used in the proposed biennial framework adjustment process for 2006 through 2007. Given the lack of detail in the cooperative industry survey provision, it is unclear what the Council or NMFS, is to do if vessel owners do not make vessels available to conduct the survey. In addition, although the cooperative industry resource survey is the Council's top research priority for scallops and the set-aside program, the research total allowable catch (TAC) set-aside program developed in Amendment 10 does not establish research TAC set-aside specifically for the resource survey. Therefore, there is no assurance that any resource-based funding would be available for the

survey. NMFS is concerned that the proposed measure is not specified in sufficient detail to be implemented, and notes that it appears likely that a framework action will be required to develop these details prior to implementation.

3. Minimum Ring Size Increase

The Council has proposed that the increase in the minimum ring size to 4 inches (10.2 cm) would be effective upon implementation of Amendment 10 in the Hudson Canyon Access Area, and 6 months following publication of the final rule for Amendment 10, if approved, in the remaining areas. NMFS seeks comment on whether it would be feasible to implement the gear conversion requirement upon publication of the final rule and implementation of Amendment 10.

4. DAS Set-aside for Observer Coverage

NMFS is concerned about effective implementation of the DAS set-aside for observer coverage that would help defray the cost of observers on open area trips. Implementation of this measure would be complicated because it requires allocation of additional fishing time that is based on several variables, including random selection of vessels to carry an observer, actual trip length, DAS and observer cost equivalents (i.e., how many days of fishing is equal to the cost of carrying an observer for 1 day, or for a trip), catch rates, and scallop value. As suggested in the Amendment 10 document, to implement the measure, NMFS proposes that vessels would be allocated a pre-determined number of additional DAS for each trip that is observed. The number of additional DAS to be allocated would be determined from a multiplier of 0.14. For example, if a vessel takes trip of 14 DAS, 1.96 DAS would be added to its allocation. A multiplier is taken from the analysis provided in the Amendment 10 FSEIS.

5. MA Closed Area

NMFS is concerned about the title of MA closed area proposed in Amendment 10. The title, "Elephant Trunk" closed area was provided to the Council by a member of the scallop industry, but it has come to NMFS's attention that the "Elephant Trunk" is also used to describe an area in the Great South Channel area of GB. NMFS therefore seeks public comment on how to clarify the designation of the area proposed in Amendment 10.

Proposed Measures

Amendment 10 proposes a number of changes to the management regime for the scallop fishery. In order to provide the public with a clear presentation of the regulations that would result if Amendment 10 is approved and implemented, NMFS is publishing the sea scallop regulations in 50 CFR part 648, subpart D, in their entirety in this proposed rule.

The proposed regulations also include some non-substantive revisions to the existing text in subpart D that are not proposed in Amendment 10; these revisions would remove obsolete language and improve the organization and clarity of the regulations.

1. Overfishing Definition

Amendment 10 proposes to maintain the existing overfishing definition in the FMP, with an increase in the minimum biomass threshold from 1/4 B_{MAX} to 1/2 B_{MAX} to be consistent with the National Standard Guidelines. Annual determinations of the status of the resource would be based on the resource conditions and fishery performance relative to biomass and fishing mortality reference points for the combined Georges Bank and Mid-Atlantic scallop resource. Amendment 10 proposes new guidelines for the Council to use during the development of biennial framework adjustments that would assure that the management measures implemented in the future would prevent overfishing and achieve optimum yield (OY) on a continuing basis.

2. Area Rotation

Under area rotation, three types of areas would exist: Closed areas; controlled access areas; and open areas. Closed areas would be closed to all scallop harvest as a result of large concentrations of fast growing, small scallops. Controlled access areas would be re-openings of closed areas or areas needing additional effort or harvest controls. Controlled access areas would have area-specific effort allocation programs, or "Area Access Programs" as described below, established to prevent rapid harvest of the scallop resource within the areas. Finally, open areas would be all areas without area-specific controls. In general, open areas would be subject to DAS and gear restrictions with no possession limit and trip limitations other than those for General Category vessels and vessels fishing for scallops outside of scallop DAS.

The Council considered various approaches to area rotation and adopted the approach that would provide the most flexibility to define future rotational areas. The "fully adaptive area rotation scheme" was adopted by the Council because it would allow more accurate area definitions compared to the fixed boundary alternatives.

Amendment 10 would establish rotational area management closures for beds of small sea scallops before the scallops are exposed to fishing mortality. Scallops have their highest growth rates when they are very small and protection of these scallops through area closures is critical in the management of the scallop resource. After a period of closure, according to the criteria and procedures established, the areas would re-open for scallop fishing when the scallops are larger and more suitable for harvest. This process would boost scallop meat yield and yield per recruit. The fully adaptive area rotation scheme would establish no pre-defined conditions for area closures and reopenings. There would be no standard closure area boundaries, dimensions, or durations. This area rotation program would be based entirely on changing conditions of the scallop resource. The biennial frameworks used to enact the fully adaptive area rotation program would use predetermined scallop biomass and growth rate reference points to determine boundaries and duration of area closures and re-openings. The fully adaptive area rotation scheme would specify guidelines as part of the biennial framework process that would be used to establish the rotational areas.

3. Initial Area Rotation

Amendment 10 proposes two areas in the MA to be part of the initial area rotation scheme. First, a redefined Hudson Canyon Access Area would be established as a controlled access scallop fishing area, with limited access scallop vessels allowed to take four trips into the area. Second, an area would be closed that includes the lower portion of the existing Hudson Canyon Access Area, and an adjacent area. The new closed area is called the "Elephant Trunk Area." Fishing for and possession of scallops would be prohibited in the Elephant Trunk Area through February 2007. Vessel transit with gear stowed would be allowed for both areas.

4. Area-specific DAS and Trip Allocations for Limited Access Vessels

Amendment 10 would limit fishing by limited access scallop vessels under area access programs in order to prevent rapid harvest of scallops in controlled access areas. Limits on fishing would include: Area-specific DAS allocations; a number of DAS to be charged for each closed area trip, regardless of trip length; a maximum number of trips allowed into each area; and a maximum sea scallop possession limit per trip.

These limits would be based upon a target TAC for each area and the level of effort that would be expected to harvest the target TAC. The harvest of scallops at a level at or above the target TAC would not result in a closure of the area. Rather, landings relative to the target TAC would be evaluated through biennial, or more frequent reviews of the fishery.

Unused controlled access DAS could not be carried forward into the next fishing year. The area target TAC, DAS allocations, maximum number of trips and possession limit, and number of DAS charged per trip would be calculated to optimize yield while reducing the potential for overexploitation of the resource in the open fishing areas.

Amendment 10 proposes specific measures that would be a part of the rotational area access program for the Hudson Canyon Area, based on a target TAC of 18,789,999 lb (8,523 mt) in 2004, and 14,956,160 lb (6,784 mt) in 2005. DAS assignments for the 2004 and 2005 fishing years would be in trip-length blocks of 12 DAS, and four trips with a trip possession limit of 18,000 lb (8,164.7 kg), consistent with a 1,500–lb (680–kg) per day catch rate. Each vessel would be charged 12 DAS for each trip, regardless of actual trip length. Trip length DAS charge and possession limits would be re-evaluated for future years through the framework adjustment process, beginning with the development of the first biennial framework in 2005, that would be effective March 1, 2006.

5. One-for-one Controlled Access Trip Exchanges

The controlled area access program would allocate each limited access vessel a specific number of trips into each controlled area. Limited access vessel owners would be allowed to enter into one-for-one exchanges of controlled access area trips. Allowing vessel owners to exchange trips would enable them to take advantage of fishing area preferences. For example, a vessel owner in the north could exchange a trip in a southern area with a vessel owner in the south for a trip in a northern area. The northern vessel would thus gain one trip in the northern area, but would give up one trip in the southern area. The total number of trips in each area would be unchanged, assuming each vessel would take all of its allocated trips. The one-for-one trip exchange provision would require more than one area to be managed under a controlled access program. This proposed rule would establish the provision for future use, because Amendment 10 proposes to open only the Hudson Canyon Access Area to controlled fishing.

6. Compensation for Sea Scallop Access Area Trips Terminated Early

Amendment 10 would allow vessel owners to request that NMFS allow compensation for a Sea Scallop Access Area trip terminated before the vessel has fished up to the automatic deducted DAS. Such trips would be allowed without counting as one of the initially allocated trips and at a reduced DAS charge and possession limit. The vessel owner must submit proof that the vessel owner terminated a controlled access trip due to unforeseen events, emergencies, or for safety reasons. This is intended to promote vessel and crew safety by preventing the minimum DAS charge from being imposed if a vessel owner/operator believes it is necessary to terminate a trip. The existing regulations provide a very limited set of circumstances that allow such DAS restoration, and this would broaden the provision.

7. Gear Restrictions

Amendment 10 proposes to increase the minimum size of the metal rings used to construct the chain bag in scallop dredge gear from 3.5 inches (8.9 cm) to 4 inches (10.2 cm) in diameter. The new minimum ring size is intended to improve yield from the scallop resource by promoting harvest of larger scallops with higher meat weights. Upon implementation of Amendment 10, if approved, all scallop dredges onboard vessels conducting a Hudson Canyon Area controlled access trip would be required to comply with the proposed requirement, because the improved selectivity of the larger rings would help achieve the objective of the controlled access program, to improve yield. A 6–month delay in effectiveness of this measure has been proposed by the Council for vessels fishing outside of the Hudson Canyon Area, in order to allow vessel owners time to convert their gear.

Amendment 10 also proposes to require all scallop dredge twine tops to be constructed of mesh with a minimum size of 10 inches (25.4 cm), inside measure, for both diamond and square mesh. The increase in the twine top mesh size is intended to minimize bycatch and bycatch mortality by improving escapement of some species of finfish.

8. Permit Restrictions

Except for vessels fishing under the NE multispecies or monkfish DAS program, or fishing for scallops under a state exemption program, vessels issued a limited access scallop permit that are not fishing under a scallop DAS, would be prohibited from possessing more than 40 lb (18.1 kg) of shucked scallops or 5 U.S. bu. (176.2 L) of unshucked scallops. This would eliminate the current allowance for limited access vessels to fish for scallops outside of DAS and land up to 400 lb (181.4 kg) of scallops. The measure is intended to prevent excessive harvest of scallops outside of DAS, which could have negative effects on overall resource conditions and DAS allocations.

9. EFH Closures

Amendment 10 would define areas to be closed to scallop fishing to minimize the impacts of scallop gear on EFH. These areas are within the areas currently closed under the NE Multispecies FMP in order to protect groundfish (CAI, CAII and the NLCA). These areas do not include the portions of the groundfish closed areas that were previously opened to the scallop fishery under the Scallop Framework 13 Closed Area Access Program. The proposed EFH closed areas include areas designated as EFH for several finfish species, which would be closed to prevent impacts by scallop gear. To promote the rebuilding of groundfish stocks, the NE Multispecies FMP prohibits the use of most bottom-tending gear in the groundfish closed areas.

10. Data Collection, Monitoring, and Scallop Research

Under the current regulations, vessels issued scallop permits may be required by the Administrator, Northeast Region, NMFS (Regional Administrator) to carry an observer onboard, with the related costs being borne by the vessel. To partially or entirely defray these costs, vessels carrying an observer would be allowed to land more scallops or utilize more DAS than it would otherwise be allowed. Amendment 10 proposes to establish a 1–percent set-aside of the total DAS in open areas and the target TAC within the Area Access Program areas to help defray the cost of observers. The set-asides for observers is intended to improve data on scallop catch and bycatch. Expansion of the program to open areas under the DAS set-aside would further improve data collection.

Amendment 10 would also establish a DAS set-aside from open area DAS and a TAC set-aside to supplement the available funding for research. Amendment 10 would expand the research objectives to be pursued using this set-aside to include habitat-related

research, research to identify potential solutions to bycatch of fish and sea turtles, and cooperative industry scallop resource survey work. The TAC set-aside made available for the research would be 2 percent of the target TAC within the the Area Access Program areas. In addition, 2 percent of the open area DAS allocation would be set aside to help fund scallop related research. A request for proposals will be published in the **Federal Register** in the near future which solicits proposals for research for the 2004 fishing year. The research set-aside program is intended to promote cooperative research related to the scallop resource and fishery.

11. Cooperative Industry Resource Surveys

Amendment 10 proposes to use a cooperative industry scallop survey to improve the precision of closed area designations, and re-opening dates and conditions. The Regional Administrator would be authorized to allocate additional compensation trips to vessels that participate in the cooperative surveys to help defray the costs of the vessel's participation in research projects. Vessel compensation and direct administrative costs for these surveys would be recaptured from the 2–percent DAS and TAC set-asides, if cooperative industry resource surveys are approved through set-aside awards.

12. Framework Adjustment Process

Amendment 10 proposes a biennial framework adjustment process for changing area rotation closed areas and area re-openings, setting DAS allocations, and making other management adjustments. In addition to a change from an annual to a biennial process, the new framework procedures would ensure that OY is achieved and overfishing is prevented on a continuing basis, through consideration of the resource condition by the Scallop Plan Development Team (PDT). In addition to the frameworkable measures in the FMP, Amendment 10 proposes that changes in the following measures could be enacted through framework action: Size and configuration of rotation management areas; controlled access seasons to minimize bycatch and maximize yield; area-specific DAS or trip allocations; amount and duration of TAC specifications following re-opening; limits on number of closures; TAC or DAS set-asides for funding research; priorities for scallop-related research that is funded by a set-aside from scallop management allocations; finfish TACs for controlled access areas; finfish possession limits; sea sampling frequency; and area-specific gear limits and specifications.

13. Proactive Protected Species Program

To reduce the risk of takes of sea turtles and other species protected under the Endangered Species Act by fishing gear used in the scallop fishery, Amendment 10 proposes a mechanism to close areas, establish seasons, implement gear modifications, or other measures through the framework adjustment process. As new information about sea turtles and other protected species becomes available, particularly if interactions between protected species and the scallop fishery increase beyond anticipated levels, the Council would propose actions to mitigate takes.

Classification

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

A notice of availability of the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 10, was published on April 18, 2003, (68 FR 19206).

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

The Council prepared an IRFA as required under section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the action, why it is being considered, and the legal basis for the action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap or conflict with any relevant Federal rules.

Description of Small Entities to Which the Proposed Rule Will Apply

The measures proposed in Amendment 10 could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the RFA because all of them grossed less than $3.5 million according to the dealer reports for the 2001 and 2002 fishing years. There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access General Category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a Full-time, Part-time or Occasional basis. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. Annual scallop revenue for the limited access sector averaged from $615,000 to $665,600 for Full-time vessels, $194,790 to $209,750 for Part-time vessels, and $14,400 to $42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel.

Two criteria, disproportionality and profitability, were considered in determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. Because all of the vessels permitted to harvest sea scallops are considered to be small entities, there are no disproportional impacts. Due to a lack of individual vessel cost data, the analyses performed for this proposed rule use increases in fleet revenue as a proxy for vessel profitability.

Proposed Reporting, Recordkeeping, and Other Compliance Requirements

There are four proposed measures that impose new reporting, recordkeeping or other compliance requirements upon the small entities that participate in the fishery.

Reporting and Recordkeeping

Two measures with new reporting requirements are intended to provide flexibility to vessel owners participating in the area access program proposed in Amendment 10. The first would allow vessel owners to request restoration of DAS charged for area access trips terminated by the vessel operator due to

an emergency, poor weather or any other reason deemed appropriate. This broken trip provision would require a vessel owner to notify NMFS via its vessel monitoring system (VMS) when the trip was terminated, and to submit a request for DAS restoration by mail to the Regional Administrator. The estimated number of such requests varies from 188–481, with the higher number based on the larger number of area access trips expected to occur if Amendment 10 is followed by action in the Joint Framework to authorize scallop fishing in the Groundfish closed areas. Each request is estimated to have associated compliance costs of $1.26, representing the cost of the VMS message ($ 0.79 per minute), postage ($ 0.37), and document reproduction ($ 0.10)). Therefore, 188 requests would impose total compliance costs of $236.88 and 481 requests would impose total compliance costs of $606.06.

The second proposed measure to provide flexibility to vessel owners participating in the area access program would allow vessel owners to exchange the controlled access trips allocated to their vessel for use within specific access areas. Such exchanges would allow vessel owners to mitigate their operating costs. For example, a vessel owner in New England with an allocated trip to an access area in the MA region could exchange with a vessel owner in the MA region who had an allocated trip to an access area in New England. Both owners could minimize their vessel operating expenses without foregoing any area access trips. A conservative estimate of the potential compliance costs associated with this provision was calculated based on the assumption that each of the 278 Full-time limited access vessels would make one exchange per year. Both vessel owners involved in the trade would be required to submit a form, so the total number of respondents would be 556. Each request is estimated to have associated compliance costs of $ 0.47 representing the cost of postage ($ 0.37) and document reproduction ($ 0.10). Therefore, 556 requests would impose compliance costs of $261.32.

Amendment 10 proposes that commercial vessels would participate in the conduct of a cooperative industry survey, with the direct costs of participation covered by a research set-aside of TAC and DAS. However, there would be some costs to vessel owners interested in participating in this survey, because they would be required to notify NMFS of their interest by submitting a form to NMFS. The number of respondents is estimated at 278, with the cost of notification estimated at $0.47 representing the cost of postage ($ 0.37) and document reproduction ($ 0.10), for a total compliance cost of $130.66.

All vessels issued permits to harvest sea scallops must carry an at-sea observer onboard, if requested by the Regional Administrator to gather data necessary to manage the fishery. The cost to the vessel is estimated at $1,100.00 per DAS. Amendment 10 proposes to mitigate the impact of this cost to vessel owners by establishing an observer set-aside that would allow vessels carrying an observer to harvest additional scallops to offset the cost. In order to ensure that all scallop vessels are considered for at-sea observer coverage, vessel owners would be required to notify NMFS of their intent to fish through their VMS. Without access to the groundfish closed areas, it is expected that approximately 1,965 trips would be reported by vessels for VMS coverage. With access to the groundfish closed areas, the number of trips would decrease (because of lower overall DAS allocations with access) to 957. The cost of notification is estimated at $0.79 per response, for a total compliance cost of $1,552.35 without access, and $756.03 with access.

Other Compliance Costs

Two proposed gear modifications have associated implementation costs: An increase in the minimum size of the rings used to construct scallop dredge chain bags from 3.5 inches (8.9 cm) in diameter to 4 inches (10.2 cm) in diameter; and an increase in the size of the mesh used to construct scallop dredge twine tops, from 8 inches (20.3 cm) to 10 inches (25.4 cm). The increase in the ring size would require vessel owners to modify their existing gear. Actual cost of converting ring size is not available. Additional information gathered during the public comment period regarding gear conversion should assist NMFS in determining the actual cost. With the exception of requiring 4–inch (10.2–cm) rings in the Hudson Canyon Access Area upon implementation, Amendment 10 proposes to provide a 6–month delay in the requirement to provide time for the industry to purchase the gear. This would temporarily mitigate the economic impact of the requirement by allowing vessel owners to use existing gear in most areas for the first 6 months after implementation and replace worn gear with the new 4–inch (10.2–cm) rings. Long-term benefits of the increased ring size are expected to outweigh the short-term cost of replacing the 3.5–inch (8.9–cm) rings because larger scallops caught with the larger ring size would be more valuable and would make up more of the overall catch. The increase in the minimum mesh size in twine tops would impose a cost on vessel owners, though scallop vessels on controlled access trips have had to use 10–inch (25.4–cm) mesh twine tops since 1999, so some vessels would already be in compliance and would have already incurred those costs. Additionally, Full-time limited access vessels customarily have to replace their twine tops several times a year, so the purchase of twine would not represent an additional expense. The process of sewing a twine top into a dredge takes about 30–45 minutes in good weather, dockside.

Economic Impacts of the Proposed Action

Economic impacts were analyzed relative to no action, defined as the continuation of the existing DAS schedule (as specified in Amendment 7) with no access by scallop vessels to the scallop resource located within the groundfish closed areas. The combined economic impacts of the proposed measures are positive for the majority of small business entities in the scallop fishing industry. Although the economic analysis was conducted for an average Full-time limited access vessel, the impacts would be similar for Part-time and Occasional limited access vessels because the overall management measures apply equally to all limited access vessels. The DAS allocations for Part-time and Occasional limited access vessels would be impacted in the same manner as Full-time DAS allocations, though proportional to their relative allocations. The impacts of specific measures are summarized below.

1. Area Rotation

The proposed area rotation alternative with access to the GB groundfish areas would have positive economic impacts on vessels compared to the no action levels in the short term from 2004 to 2007. Gross revenues would increase by over 50 percent from 2004 to 2007. The average gross profits per year are estimated to be positive during these first 4 years, and to exceed the no-action levels by approximately $72,000 from 2004 to 2007. The impacts would be positive over the next 4 years (2008–2011) as well. Therefore, if all vessels are able to use their area-specific DAS allocations, and if access is provided to the Groundfish closed areas by the Joint Framework, the impacts on vessel revenues and profits would be positive both in the short and long term.

Although the proposed regulations are expected to benefit most vessels in the

scallop fishery by increasing the productivity of the scallop resource, these benefits may not necessarily be equally distributed. Area rotation and area closures could have differential effects on scallop vessel owners, processors, ports, and fishing communities, depending upon their home port proximity to open and controlled access areas. These impacts may vary depending upon the relative mobility of vessels in accessing alternative fishing areas. However, the differential effects are difficult to quantify and predict since actual effects would depend on reaction to the new regulations by the industry.

Without future access to the Groundfish closed areas, area rotation would increase estimated gross and net revenues for the first 3 years, from 2004 to 2006, but would have negative impacts on revenue and profits in subsequent years as vessels would not benefit from abundant fishing grounds and as the resource in open areas becomes less abundant. Annual average gross revenues would decrease by 4 percent per year from 2008 to 2011.

2. Annual DAS Allocations

This action would allocate DAS to vessels in order to achieve OY from the scallop resource. The DAS allocations would be area-specific, and one-to-one exchanges would be allowed between vessel owners for the controlled access area trips. The initial DAS allocations and catch levels proposed by Amendment 10 are higher than the allocations and catch levels under the no action alternative. As a result, vessel landings, revenues and gross profits would increase in the short term, compared to the no action alternative.

These economic impacts assume that all vessels would be able to access each of the controlled access areas. There is uncertainty, however, regarding the number of vessels that would be able to fish in those areas or that would be able to trade their trips in one access area for trips to a preferable access area. The analysis showed that, although the majority of the Full-time limited access vessels that were active in 2002 previously fished both in the controlled access areas of GB and Hudson Canyon, about 9 percent of them never fished in the MA controlled access areas, another 17 percent never fished in the GB groundfish areas, and about 8 percent never fished in any of these areas. These three groups of vessels constitute about one-third of the Full-time vessels that were active in the 2002 fishing year and that would be allocated trips in areas that they have not fished in the past.

When the analysis was conducted, however, based on a sample of vessels that were active during all the years when access was provided to these areas, the percentage of Full-time vessels that did not access one or more of the controlled access areas in GB and the MA was reduced to 22 percent. Therefore, the proportion of vessels that could be affected by area-specific DAS allocations ranges from one-fourth to one-third of the Full-time fleet. Although the provision that allows one-to-one exchange of controlled access area trips may mitigate these impacts, some vessels may be unable to arrange an exchange to fish in a preferable area if other vessel owners are not willing to exchange trips. These vessels could face negative economic impacts from area-specific trip and DAS allocations if they are unable to take their trips to specific controlled access areas due to the limitations in vessel size and equipment, safety concerns, or cost factors. Controlled area access revenue is estimated to constitute 45 percent of the total scallop revenue in 2004 and 35 percent in 2005, if there is no access to groundfish closed areas. Controlled area access revenue is estimated to increase to 66 percent of the total scallop revenue in 2004 and 60 percent in 2005, if there is access provided to the groundfish closed areas through Joint Framework 16/39. The scallop revenue from even one access area trip could amount to more than 10 percent of the annual revenue in 2004 without access to the Groundfish closed areas and close to 10 percent of the annual revenue with access to the Groundfish closed areas. Therefore, the loss of revenue and gross profits from controlled access trips could be significant, even if one or two of these trips could not be taken.

Under the proposed area access program, a vessel could harvest 18,000 lb (8,165 kg) of scallop meats, with a minimum charge of 12 DAS for each area access trip. This trade-off would result in maximum annual net revenues per vessel from the controlled access areas in 2004 alone, or on average for the period 2004 to 2007. When compared to other possession limits, the possession limit of 18,000 lb (8,165 kg) is slightly lower than the status quo trip limit of 21,000 lb (9,525 kg) and could constrain larger vessels with the capacity to land more scallops per trip. However, larger possession limits at higher automatic DAS deduction (e.g., 21,000 lb (9,525 kg) with an automatic 14 DAS deduction) result in a smaller number of trips per vessel as less trips would be necessary to harvest the target TAC. As a result, a 21,000–lb (9,525 kg) or larger possession limit generates lower average annual net revenues for 2004 2007, compared to the other possession limit alternatives. On the other hand, it could be difficult for some vessels to land the possession limit within 12 DAS. In order to accommodate for this difficulty, this rule proposes that the limited access vessels would be charged no more than 12 DAS, even if the actual trip length was longer.

3. One-to-one Exchanges of Controlled Access Area Trips

To mitigate the potential adverse impacts related to the fact that some vessels may not be able to utilize area access trips into specific areas, the proposed action would allow one-to-one exchanges of controlled access area trips. This is expected to provide flexibility to vessel owners regarding which areas to fish, thereby reducing the possibility of revenue loss if they are unable to access some areas. As noted above, the compliance costs associated with this provision are minor, and the measure should provide benefits to vessel owners involved in an exchange.

4. Compensation for Sea Scallop Access Area Trips Terminated Early

This action proposes to allow vessel owners to request compensation for Sea Scallop Access Area trips terminated by the vessel operator due to unforseen events, emergency, or safety reasons. If such a request is approved by NMFS, a vessel would be authorized to resume the area access trip and harvest 1,500 lb (680 kg) of scallop meats for each DAS restored. Therefore, this measure would have positive economic impacts on vessels by reducing lost revenue from area access trips that are terminated, making it more likely that vessels would utilize their controlled access trips. As noted above, the compliance costs associated with this measure are minor.

5. Gear Restrictions

The proposal to increase the minimum ring size to 4 inches (10.2 cm) is expected to have positive economic impacts overall, despite short-term costs associated with gear changes. Larger rings would allow more small scallops to escape capture, reducing discard mortality and improving yield and vessel revenue. The increase in the ring size is estimated to improve the efficiency of the gear in capturing large (greater than 4.3–inch (10.9–cm)) scallops by about 10–15 percent. In addition, gear efficiency for large scallops would increase, reducing the tow time needed to catch the allowed possession limit. This in turn could

result in lower vessel operating expenses. The positive benefits of the 10–inch (25.4 cm) twine top requirement are indirect, because the measure would allow for greater escapement of many finfish species, thus minimizing bycatch. Without measures to keep bycatch low, the Council felt it was unlikely that scallop vessels would be allowed to fish within the Groundfish closed areas. The Council did not consider alternatives for mesh larger than 10 inches (25.4 cm) because studies of 12–inch (30.5–cm) mesh twine tops indicate excessive reductions in scallop catch.

6. General Category Permit Restrictions

This proposed action would prohibit a vessel issued a limited access permit to harvest scallops under the regulations applicable to the General Category when not fishing on a scallop DAS. This would prohibit an activity that is allowed under current regulations. Although one-third of the limited access vessels landed some scallops under the General Category rules during the 2002 fishing year, only 7 percent of these vessels derived more than 1 percent of their revenues from the General Category trips. The Council concluded that the measure would benefit most limited access vessels, since an increase in General Category landings could require the reduction of DAS allocations to limited access vessels in the future. Such reductions would impact all limited access vessels, including those that have never harvested scallops under the General Category.

Vessels holding General Category scallop permits and limited access scallop vessels fishing under a NE multispecies or monkfish DAS would be authorized to harvest up to 400 lb (181.4 kg) of scallop meats from open areas and controlled access areas. Allowing the harvest of up to 400 lb (181.4 kg) of scallop meats in controlled access areas would benefit vessels that have been restricted to 100 lb (45.4 kg) in controlled access areas under previous actions.

7. Habitat Alternatives

Amendment 10 proposes to close specified areas to scallop gear to minimize the adverse effects of fishing on EFH to the extent practicable. The areas identified for closure are currently closed to the scallop fishery by regulations implemented under the NE Multispecies FMP to conserve groundfish. Therefore, establishing these areas as Habitat Closed Areas in Amendment 10 would have no impact on small entities, when compared to the no action alternative.

8. Biennial Framework Adjustment Procedure

The framework provision would have positive impacts on the scallop industry by adjusting the management actions to changing resource conditions. Biennial adjustments would enable participants in the fishery to conduct their business planning on a biennial basis, as well.

9. Proactive Protected Species Program

This program is expected to have positive impacts on the scallop fishery by helping to minimize the interactions between scallop gear and protected species and, therefore, reducing the need for more conservative actions that could have negatively impacts on the small businesses in scallop industry.

Economic Impacts of Significant and Other Non-selected Alternatives

The RFA requires consideration of alternatives that accomplish the stated objectives of the applicable statutes and that minimize economic impacts on small entities. The IRFA should identify any significant alternatives that would minimize economic impacts on small entities, if such alternatives exist. If there is an alternative with less impact on small entities that meets the stated objectives, the IRFA should identify and describe such an alternative. A rationale should be provided to explain any unavoidable adverse effects on small entities that are necessary to achieve the objectives.

The Council compared the economic impacts of the proposed measures to the impacts of the other significant alternatives considered. The Council selected its proposed measures to function as a set of integrated measures that would, when implemented, achieve a number of conservation and management objectives while minimizing the economic impacts on the industry, to the extent possible. Therefore, one of the many analyses conducted by the Council evaluated the impacts of the set of proposed measures in comparison to the no action measures, and considered the impacts both with and without future access to the groundfish closed areas through The Joint Framework. Furthermore, the impacts of the proposed measures were compared to the status quo alternative, defined to be limited access fishing DAS allocated consistent with the existing fishing mortality targets and the current condition of scallop resource, no increase in the minimum ring size, and no area rotation program.

The results of this analysis show that the combined economic impacts on small entities of the proposed measures are positive when compared to the impacts of both the no action and status quo measures, if there is future access to the groundfish closed areas. If there is no future access to the groundfish closed areas, however, economic impacts from the proposed option would be negative in comparison to no action after the first 4 years of implementation. This is because open areas would be fished at a higher rate in the absence of access to the groundfish closed areas, reducing landings per unit effort and, consequently, resulting in lower landings than the level of landings under the no action alternative.

With or without access to the groundfish closed areas, the proposed measures would result in higher DAS allocations than the no action alternative. This would translate into higher landings, lower prices, larger fleet revenue, producer and consumer surpluses and greater total benefits than the no action alternative during the first 4 years of the program (2004 to 2007). The annual fleet revenues would exceed no action levels by $58 million during the initial 4–year period with access to the groundfish closed areas, and by $37 million without access to the groundfish closed areas. The cumulative value of the net benefits, measured by the sum of consumer and producer surpluses net of no action, would reach $371 million with access to the groundfish closed areas, and $124 million without access during the initial 4–year period. The economic impacts during the following 4 years, and in the long term, would also be positive if access is allowed to the groundfish closed areas, increasing total benefits by $53 million during 2008–2012 and by $95 million over the long term (2013–2030).

The alternatives considered by the Council included alternatives with no area rotation component, as well as various rotational management alternatives with fixed area boundaries, various closure durations, and inflexible/mechanical rotation schemes. These were examined with both 3.5–inch (8.9–cm) and 4–inch (10.2–cm) ring requirements.

The Council did not find it necessary to select one of these other alternatives because development of the Joint Framework was contemplated by the Council at the time it selected its proposed measures. The Joint Framework addresses the circumstances that would cause the negative impacts projected in the absence of access to the groundfish closed areas. It should be possible to develop a program to allow such access before the negative impacts of the proposed measures are experienced by the industry.

Amendment 10 also includes analyses that compare the various alternatives. The proposed rotational management measure (adaptive rotation with flexible area boundaries based on frequent surveys of the resource) was found to have positive impacts compared to alternatives that did not include area rotation. This is because it protects small scallops during periods of their highest growth rates, and allows the boundaries of closed areas to be determined more accurately, improving both yield and fishing efficiency. The proposed area rotation measure also had higher benefits compared to other rotational management alternatives with mechanical rotation and fixed boundaries. Specifically, area rotation closed areas would be determined optimally based on recent surveys, and area boundaries could be established to minimize the social and economic impacts on fishing communities located close to areas proposed for closure or area access programs.

The results also showed that area rotation combined with 3.5–inch (8.9–cm) rings could result in slightly higher economic benefits in the first 10 years of implementation, than area rotation combined with the proposed 4–inch (10.2–cm) ring size. Four-inch rings result in slightly lower landings, about a million pounds per year on the average, compared to the 3.5–inch (8.9–cm) ring options during the first 10 years from 2003 to 2013 under all scenarios. However, over the long term, the increase in ring size yields higher benefits than those achieved with the smaller ring size.

In addition, analysis of the ring size indicates that the 4–inch (10.2–cm) rings are preferable over the long-term because they reduce mortality on small scallops and, as a result improve yield and increase scallop revenues. By improving dredge efficiency in harvesting larger scallops, the use of 4–inch (10.2–cm) rings would also reduce bottom contact time, potentially reducing both bycatch of other species and impacts on habitat. Thus, the Council rejected alternatives with no area rotation and rotational management alternatives that incorporated the 3.5–inch (8.9–cm) ring size in favor of the proposed measures.

Even without access to the groundfish closed areas, almost all of the rotational management alternatives would result in an increase in landings compared to the status quo option over the first 10 years of the management program. The status quo alternative is estimated to result in landings averaging 32 million lb (14,515 mt) per year, while most of the rotational management options increase average landings to 33–34 million lb (14,968–15,422 mt) per year from 2003–2012. There are three rotational management alternatives that would not increase average landings during the period: The mechanical rotation alternative, the alternative that allows areas to be closed for 4 years, and the program that allows 50 percent and 100 percent of the maximum biomass to be located in closed areas. Mechanical rotation is estimated to reduce average landings and revenues per year, and result in high variability in landings, prices, revenues and in total economic benefits during the first 10 years, as well as in the long term. In general, the rotational management options that increase closure duration or the amount of biomass that can be within closed areas, also would result in higher variability in landings and prices, which could reduce vessel revenues.

The rotational management alternatives with access to the groundfish closed areas are estimated to result in an increase in average annual landings during the 10–year period from 32 million lb (14,515 mt) under status quo to 39–55 million lb (17,690–24,948 mt) with access to some groundfish closed areas. If the scallop fishery has access to all groundfish closed areas, the average annual landings for the period could increase to 68 million lb (30,844 mt). Rotational management alternatives were also considered that would have utilized the groundfish closed areas as a "stabilizing reservoir." These alternatives increase average landings to 40–46 million lb (18,144–20,865 mt) per year, while at the same time reducing the variability.

The Council considered a large number of alternatives to minimize and mitigate adverse effects of the fishery on EFH, to the extent practicable. The alternatives are briefly defined below, including the four alternatives adopted by the Council.

Alternative 1, status quo measures with no scallop access to Groundfish closed areas;

Alternative 2 (adopted by the Council), habitat benefits of other selected measures in Amendment 10;

Alternative 3 (a and b), area closures to protect hard-bottom habitat;

Alternative 4, area closures to proect hard-bottom habitats that overlap proposed modified groundfish closed areas in Amendment 13;

Alternative 5 (a-d), area closures designed to protect EFH and balance fishery productivity;

Alternative 6 (adopted by Council), area closures within the Groundfish closed areas that maintain closure to the scallop fishery of areas that were closed to scallop fishing under Framework 13;

Alternative 7, area closures designed to protect areas of high EFH value and low scallop productivity;

Alternative 8 (a and b), area closures on the eastern portion of GB;

Alternative 9, area closures that include all of the existing year-round groundfish closed areas in southern New England, GB and the Gulf of Maine;

Alternative 10, restrictions on use of rock chains;

Alternative 11 (adopted by the Council), increase in the minimum ring size to 4 inches (10.2 cm);

Alternative 12 (adopted by the Council), habitat research funded through scallop TAC set-aside; and

Alternative 13, area based management and rotation based on habitat protection.

Many of these alternatives (1, 3a, 3b, 4, 5a-d, 6, 7, 8a, 8b, 9) proposed to close various areas and the impacts on revenues and economic benefits from various habitat closures were examined. These relative impacts show that proposed Alternative 6 was ranked in the middle of the range of impacts on scallop revenues and economic benefits. Several other habitat alternatives, including Alternatives 5a, 5c, 5d, 8a, and 8b, would have lower impacts on vessel revenues. These alternatives were not chosen, however, because they either had impracticable social/economic impacts on some fishing communities or did not satisfy the requirement to minimize adverse impacts of fishing on EFH, to the extent practicable.

The alternatives considered by the Council also included measures other than closures. An alternative to restrict the use of rock chains (Alternative 10), was determined to have a neutral impact on habitat because it was not anticipated to reduce the footprint of the scallop fishery. Another alternative, that was ultimately adopted, was the 4–inch (10.2–cm) ring requirement (Alternative 11), which was found to have a modest benefit to habitat through reductions in bycatch and epifaunal displacement. In the initial implementation period, it appeared that this alternative could increase area swept, as dredge efficiency decreases and previously recruitable scallops are no longer retained. This was expected to last approximately 1 year, at which point those same scallops would be recruitable and, as the average size of recruited scallops increases area swept is projected to decrease due to the increased efficiency of 4–inch (10.2–cm) rings in catching large scallops.

The proposed action relies on the EFH benefits of all of the other management measures in the proposed action, along with the establishment of portions of the current groundfish closed areas as EFH Closed Areas. This would preserve within the Scallop FMP the habitat benefits currently realized as a result of the NE Multispecies FMP provision that prohibits the use of scallop gear within those closed areas. The establishment of these closures as EFH measures would prohibit the use of scallop gear in vulnerable EFH areas containing various benthic habitat types. This is the only habitat closure alternative that does not have significant revenue losses for other fisheries including those harvesting groundfish and monkfish, because most of this area has been closed to access by these fisheries since 2001.

This proposed rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Broken trip adjustment, OMB #0648–0416 (0.27 hr per response);
2. One-to-one trip exchange, OMB #0648–0416 (0.083 hr per response);
3. Open area trip declaration for observer deployment, OMB #0648–0416 (0.033 hr per response); and
4. Cooperative research participant enrollment form, OMB #0648–0416 (0.02 hr per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 18, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, paragraph (b)(1) introductory text is revised, and paragraph (b)(3) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) Unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, a scallop vessel issued a Full-time or Part-time limited access scallop permit; or a scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60; or a scallop vessel fishing under the small dredge program specified in § 648.51(e); or a vessel issued a limited access multispecies, monkfish, Occasional scallop, or Combination permit whose owner elects to provide the notifications required by this paragraph using a VMS, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a). The owner of such a vessel must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

* * * * *

(3) Atlantic Sea Scallop Vessel VMS Notification Requirements. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits are required to comply with the additional VMS notification requirements specified in § 648.60(c)(2)(ii), except that scallop vessels issued Occasional scallop permits and not participating in the Area Access Program specified in § 648.60 may provide the specified information to the Regional Administrator by calling the Regional Administrator.

3. In § 648.14, paragraphs (a)(56), (a)(57), (a)(61), (a)(97), (a)(110), (a)(111), (h), and (i) are revised to read as follows:

§ 648.14 Prohibitions.

(a)* * *

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a General Category scallop permit;

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is fishing under the scallop DAS program as specified in § 648.53;

(iii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters; or

(iv) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the state waters exemption program specified in § 648.54.

(57) Fish for, possess or land per trip, scallops in excess of 400 lb (181.44 kg) or 50 bu (17.62 hl) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and the vessel is fishing under the scallop DAS program;

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters; or

(iii) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the

state waters exemption program specified in § 648.54.

* * * * *

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.2 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(97) Fail to comply with any of the provisions specified in § 648.56.

* * * * *

(110) Fish for, possess, or land sea scallops in or from the areas specified in §§ 648.58 and 648.61.

(111) Transit or be in the areas described in §§ 648.58 and 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas.

* * * * *

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 40 lb (18.4 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(3) If the vessel is not subject to VMS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(4) Combine, transfer, or consolidate DAS allocations.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(6) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i)(E) or (F).

(7) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i)(E) or (F).

(8) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 l) of in-shell scallops, or participate in the DAS allocation program, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1).

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(11) Possess or use dredge gear that does not comply with any of the provisions and specifications specified in § 648.51(a) or (b).

(12) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(13) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(14) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Administrator.

(15) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(16) Refuse or fail to carry an observer if requested to do so by the Regional Administrator.

(17) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(18) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(19) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(20) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(21) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(22) Fail to comply with any of the provisions and specifications of § 648.60.

(23) Possess or land more than 50 bu (17.62 hl) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. lat., except as provided in § 648.54.

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Fish for, possess, or land per trip, more than 400 lb (181.44 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops.

(2) Fish for, possess, or land scallops on more than one trip per calendar day.

(3) Possess or use dredge gear that does not comply with any of the provisions or specification specified in § 648.51(a) or (b).

* * * * *

4. Subpart D is revised to read as follows:

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

Sec.

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling.* Any time at landing or after, including when the scallop are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard will be determined as follows: Samples of 40 scallops each will be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10–inch (25.4–cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Prior to [6 months after the date of publication of the final rule in the FEDERAL REGISTER], the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 3.5 inches (8.9 cm), unless otherwise required under the Sea Scallop Area Access Program specified in § 648.60(a)(6).

(ii) Beginning [*6 months after the date of publication of the final rule in the FEDERAL REGISTER*], the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(iii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., "hangers," are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft (2.4 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by

netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program as specified in paragraph (e) of this section, or otherwise authorized by the Regional Administrator.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

§ 648.52 Possession and landing limits.

(a) Owners or operators of vessels with a General Category scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 L) of in-shell scallops. Such vessels may not land scallops on more than one trip during any single calendar day, which is defined as the 24–hour period beginning at 0001 hours and ending at 2400 hours.

(b) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, unless exempted under the state waters exemption program described under § 648.54, and owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from fishing for, possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels specified in this paragraph (b) and not issued a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as specified in § 648.60 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.60(a)(5).

(d) Owners or operators of vessels issued limited access or General Category scallop permits fishing in or transiting the area south of 42°20′ N. lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless fishing under the state waters exemption as specified under § 648.54.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in §§ 648.58 and 648.59 will be specified through the framework process as specified in § 648.55.

(2) One percent of total DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(i) of this section. Two percent of total DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(ii) of this section.

(3) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(3) (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total DAS allocation. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS Category	2004[1]	2005
Full-time	42	117
Part-time	17	47
Occasional	4	10

[1] Unless additional DAS are allocated as specified in paragraph (b)(4) of this section.

(4) *Additional 2004 DAS.* Unless a final rule is published in the **Federal Register** by August 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the Northeast multispecies closed areas specified in § 648.81(a), (b), and (c), the DAS allocations for the 2004 fishing year, beginning on August 15,

2004, shall increase by the following amounts:

DAS Category	2004 DAS Increase
Full-time	20.
Part-time	8.
Occasional	1.

(c) *Sea Scallop Access Area DAS allocations.* Vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated additional DAS to fish only within each Sea Scallop Access Area, as specified in § 648.60(a)(3).

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations will be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council may adjust DAS allocations through a framework action at any time, if deemed necessary.

(e) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS carried over into the next fishing year may only be used in open areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless participating in the Area Access Program described in § 648.60, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(h) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS allocations will be set aside from the total DAS allocation and reallocated to vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2004 and 2005 fishing years are 117 DAS and 304 DAS, respectively. Vessels carrying an observer will be allocated additional DAS for use in the applicable fishing year on a first-come, first-served basis. Allocation of additional DAS will be made based on the length of the trip and by using a DAS multiplier of 0.14. For example, a vessel taking a 10–DAS trip with an observer will be allocated an additional 1.4 DAS at the end of its trip. Likewise, a vessel taking a 15–DAS trip with an observer will be allocated an additional 2.1 DAS at the end of its trip. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2004 and 2005 fishing years are 233 DAS and 607 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS will be provided through a letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

§ 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption.* (1) DAS requirements. Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section.

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been deemed by the Regional Administrator under paragraph (c) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General Category scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *State eligibility for exemption.* (1) A state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(3) Maine, New Hampshire, and Massachusetts have been determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

(d) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional

Administrator in accordance with the provisions of § 648.10(e).

(e) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification by the participating vessel's owner.

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

§ 648.55 Framework adjustments to management measures.

(a) Biennially, or upon a request from the Council, the Regional Administrator will provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT will prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council will initiate a framework adjustment to establish or revise DAS allocations, rotational area management programs, TACs, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria.

(b) The preparation of the SAFE Report shall begin on or about June 1, 2005, for fishing year 2006, and on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year will continue, beginning March 1 of each fishing year.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (e.g., those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

(1) Differential fishing mortality rates for the various spatial components of the resource;

(2) Overall yields from the portions of the scallop resource available to the fishery;

(3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and

(4) Potential adverse impacts on EFH.

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. Such adjustments may include proactive measures to address protected species concerns. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) DAS changes.

(2) Shell height.

(3) Offloading window reinstatement.

(4) Effort monitoring.

(5) Data reporting.

(6) Trip limits.

(7) Gear restrictions.

(8) Permitting restrictions.

(9) Crew limits.

(10) Small mesh line.

(11) Onboard observers.

(12) Modifications to the overfishing definition.

(13) VMS Demarcation Line for DAS monitoring.

(14) DAS allocations by gear type.

(15) Temporary leasing of scallop DAS requiring full public hearings.

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.

(17) Aquaculture enhancement measures and closures.

(18) Closed areas to increase the size of scallops caught.

(19) Modifications to the opening dates of closed areas.

(20) Size and configuration of rotation management areas.

(21) Controlled access seasons to minimize bycatch and maximize yield.

(22) Area-specific DAS or trip allocations.

(23) TAC specifications and seasons following re-opening.

(24) Limits on number of area closures.

(25) TAC or DAS set-asides for funding research.

(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside.

(27) Finfish TACs for controlled access areas.

(28) Finfish possession limits.

(29) Sea sampling frequency.

(30) Area-specific gear limits and specifications.

(31) Any other management measures currently included in the FMP.

(f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall

implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi2 (5,000 km2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) VMS.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not effect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Administrator does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.56 Scallop research

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§ 648.53(b)(2) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS will provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Upon completion of scallop research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

§ 648.57 Sea scallop area rotation program.

(a) An area rotation program is established for the scallop fishery, which may include areas closed to

scallop fishing defined in § 648.58, and/or sea scallop access areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as closed areas or access areas are open to scallop fishing as governed by the other management measures and restrictions imposed in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a).

(b) [Reserved]

§ 648.58 Rotational closed areas.

(a) *Mid-Atlantic (Elephant Trunk) Closed Area.* Through February 28, 2007, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ET1	38°50′N.	74°20′W.
ET2	38°10′N.	74°20′W.
ET3	38°10′N.	73°30′W.
ET4	38°50′N.	73°30′W.
ET1	38°50′N.	74°20′W.

(b) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraph (a) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

§ 648.59 Sea scallop access areas.

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, vessels issued limited access scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, unless the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Limited access scallop vessels may not possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is participating in, and complies with the requirement of, the area access program described in § 648.60, or is transiting the area as provided in paragraph (b) of this section.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′N.	73°10′W.
H2	39°30′N.	72°30′W.
H/3ET1	38°50′N.	73°30′W.
H4/ET2	38°10′N.	74°20′W.
H1	39°30′N.	73°10′W.

(b) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish for or possess scallops in the Sea Scallop Access Areas described in this section, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

§ 648.60 Sea scallop area access program requirements.

(a) Vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in § 648.59 and during seasons specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(8) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas and during seasons specified in § 648.59, subject to the possession limit specified in § 648.52(b). If no season is specified in § 648.59, the Access Area is open from March 1 through February 28 of each fishing year.

(1) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information described in paragraph (c)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of trips.* Except as provided in paragraph (c) of this section, a vessel is limited to the following number of trips and DAS into each of the Sea Scallop Access Areas during seasons specified in § 648.59:

(i) *Full-time vessels.* A Full-time vessel is restricted to a total of 4 trips, equaling 48 DAS, into the Hudson Canyon Access Area.

(ii) *Part-time vessels.* A Part-time vessel is restricted to a total of 1 trip, equaling 12 DAS, into the Hudson Canyon Access Area.

(iii) *Occasional scallop vessels.* An Occasional vessel is restricted to a total of 1 trip equaling 12 DAS into the Hudson Canyon Access Area.

(iv) *One-for-one area access trip exchanges.* If the total number of trips into all Sea Scallop Access Areas combined is greater than one trip, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for unutilized trips into another Sea Scallop Access Area. A vessel owner must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective, but no later than May 1 of each year. Each vessel involved in an exchange is required to submit a completed Trip Exchange Form. Trip Exchange Forms will be provided by the Regional Administrator.

The transfer is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel on a Sea Scallop Access Area trip may not exit that Sea Scallop Access Area and transit to, or enter, another Sea Scallop Access Area on the same trip.

(5) *Possession and landing limits.* Unless authorized by the Regional Administrator as specified in paragraph (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area in fishing year 2004 and 2005, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

(6) *Gear restrictions.* The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm). Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(b) *Accrual of DAS.* For each Sea Scallop Access Area trip, except as provided in paragraph (c) of this section, a vessel on a Sea Scallop Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before the vessel has fished up to the number of DAS automatically deducted, due to unforeseen events, emergency or safety reasons, as determined by the owner/operator of the vessel, the vessel may be authorized to fish an additional trip in the Sea Scallop Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early due to an unforeseen event, emergency, or safety reason;

(2) The landing of the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the early termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name; vessel owner; vessel operator; time of trip termination; emergency or safety reason for terminating the trip; expected date and time of return to port; and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the early terminated trip.

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the number of DAS for such trip and the amount of scallops the vessel may land on such trip, pursuant to the calculation specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The number of DAS a vessel may fish on an additional trip in the Sea Scallop Access Area will be calculated as the difference between the number of DAS automatically deducted for the trip as specified in paragraph (b) of this section, and the sum of the following calculation: 2 DAS, plus one DAS for each 10 percent (1,800 lb (816 kg)) increment of the overall possession limit on board. For example, a vessel that terminates a Sea Scallop Access Area trip on the 5th day of the trip with no scallops on board would be charged 2 DAS for the trip and could make an additional trip of no more than 10 DAS. Likewise, a vessel returning to port prior to the 12th DAS with 5,000 lb (2,268 kg) of scallops on board would be charged 5 DAS (2 DAS plus 3 DAS for the 3, 10 percent (1,800 lb (816 kg) increments) and could make a resumed trip of 7 DAS. Pounds of scallops landed shall be rounded up to the nearest 1,800 lb (816 kg).

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680 kg) multiplied by the number of DAS authorized for the resumed trip. In the second example provided in paragraph (c)(5)(i) of this section, the vessel could land up to 10,500 lb (4,763 kg) of scallops.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip may only utilize the DAS allocated for that trip as determined under paragraph (c)(5)(i) of this section. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the DAS authorized the trips into one additional trip if all terminated trips occurred in the same access area and provided the total of the combined resumed trips does not exceed the number of additional DAS deducted as specified in paragraph (c)(2) of this section.

(d) *Increase of possession limit to defray costs of observers.*—(1) *Observer set-aside limits by area.* For the 2004 and 2005 fishing years, the observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt) and 149,562 lb (67.8 mt), respectively.

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of limited access scallop vessels will be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator will notify owners of limited access vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(1) *Research set-aside limits and number of trips by area.* For the 2004 and 2005 fishing years, the research set-aside for the Hudson Canyon Access Area is 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(2) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to

the amount specified in paragraph (e)(1) of this section.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs for the polling.

§ 648.61 EFH closed areas.

Notwithstanding any other provision of this part, the following areas are closed to scallop fishing to protect EFH from adverse effects of scallop fishing:

(a) *Closed Area I EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I EFH Closure. No vessel may possess scallops in the Closed Area I EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Closed Area I EFH Closure consists of two sections, defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

SECTION 1

Point	Latitude	Longitude
CAIE1	41°30′N.	69°23′W.
CAIE2	41°30′N.	68°35′W.
CAIE3	41°08′N.	69°4.2′W.
CAIE4	41°30′N.	69°23′W.

SECTION 2

Point	Latitude	Longitude
CAIE5	41°04.5′N.	69°1.2′W.
CAIE6	41°0.9′N.	68°30′W.
CAIE7	40°45′N.	68°30′W.
CAIE8	40°45′N.	68°45′W.
CAIE5	41°04.5′N.	69°1.2′W.

(b) *Closed Area II EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II EFH Closure. No vessel may possess scallops in the Closed Area II EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Closed Area II EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIE1	42°22′N.	67°20′W. (the U.S.-Canada Maritime Boundary)
CAIIE2	41°30′N.	66°34.8′W. (on the U.S./Canada Maritime Boundary)
CAIIE3	41°30′N.	67°20′W.
CAIIE1	42°22′N.	67°20′W. (the U.S.-Canada Maritime Boundary)

(c) *Nantucket Lightship Closed Area EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area EFH Closure. No vessel may possess scallops in the Nantucket Lightship Closed Area EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Nantucket Lightship Closed Area EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSE1	40°50′N.	70°20′W.
NLSE2	40°50′N.	69°29′W.
NLSE3	40°50°N.	69°00′
NLSE4	40°3′N.	69°14.5′W.
NLSE5	40°′N.	69°00′W.
NLSE6	40°20′N.	70°20′W.
NLSE1	40°50′N.	70°20′W.

(d) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) through (c) of this section, unless the vessel is transiting the area(s) as allowed in § 648.81(b)(2) and (d).

[FR Doc. 04–4019 Filed 2–25–04; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 38
Thursday, February 26, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rio Grande National Forest, Colorado, County Line Vegetation Management Project

AGENCY: Forest Service, USDA

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service gives notice that it is preparing an Environmental Impact Statement (EIS) to implement vegetation management treatments and travel management in the spruce/fir forests within the Conejos Peak Ranger District, Rio Grande National Forest, Colorado. The agency gives notice of the environmental analysis and decision process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Scoping comments must be received within thirty days of publication of this Notice Of Intent in the Federal Register. Public meetings were previously held and no further meetings are planned. The draft environmental impact statement is expected to be available for review and comment in April 2004. The final environmental impact statement and decision is expected in August 2004.

ADDRESSES: Send written comments to: Rio Grande National Forest, ATTN: John Murphy, 1803 W. Hwy 160, Monte Vista, CO 81144. Send e-mail comments to: *mailroom_r2_rio_grande@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: John Murphy at (719) 852–5941.

SUPPLEMENTARY INFORMATION: The proposed project is located in a 2,282 acre analysis area in portions of the Wolf Creek (near Cumbres Pass) and Rio de Los Pinos watersheds. The proposed commercial conifer treatment areas currently are infested with spruce beetles (*Dendroctonus rufipennis*) or are in stands that are susceptible to spruce beetle infestations.

The project proposes to improve the health and vigor of the forest by salvaging approximately 841 acres of dead and/or dying Engelmann spruce trees to recover wood products that would otherwise be lost, and to remove high risk Engelmann spruce trees from 715 acres to make these stands more resilient to spruce beetle infestations. These actions would reduce rule loadings to reduce wildfire risk, provide opportunities for reforestation and improve residual stand vigor.

Rehabilitation of areas heavily impacted by bark beetles mortality through the completion of natural and artificial regeneration activities would occur as needed. An estimated 693 acres would be planted with spruce seedlings. Travel management is proposed for this project.

The purpose of this activity is to restore and rehabilitate ecological values in areas where excessive numbers of open roads exist and to provide access to areas heavily impacted by spruce beetle. This proposal would close 2.1 miles of road and convert it to a non-motorized trail. A reduction in open road density following project implementation would reduce adverse environmental impacts associated with excessive numbers of roads and would reduce long-term maintenance costs.

The transportation system required to access commercial harvest areas is in place throughout most of the analysis area. However, some new system and temporary road construction would be required.

Vegetation management treatments involving commercial harvest, artificial regeneration, and travel management would occur on National Forest system lands located within portions of sections 2, 3, 11 and 12 of Township (T) 32 North (N), Range (R) 4 East (E) and sections 22, 23, 25, 26, 27, 34, 35 and 36 of T33N, R4E, Conejos County, CO.

The proposed actions would implement management direction, contribute to meeting the goals and objectives identified in the 1996 Revised Land and Resource Management Plan, as amended, for the Rio Grande National Forest (Forest Plan), and move the project area toward the desired condition. This project EIS would tier to the Forest Plan, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The development of this project began during the summer of 2003 with an environmental assessment (EA). Public scoping was completed in September of 2003. The interdisciplinary team reviewed public comment, identified issues, developed action alternatives and began the effects analysis for this project. Since that time the deciding official decided that an Environmental Impact Statement would be a more appropriate means of analysis for this project.

The Forest Service will analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Responsible Official: Peter Clark, Forest Supervisor, Rio Grande National Forest. 1803 W. Hwy 160, Monte Vista, CO 81144.

Comments Requested: Comments will continue to be received and considered throughout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period for the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in August, 2004. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: February 20, 2004.

Peter L. Clark,

Forest Supervisor, Rio Grande National Forest.

[FR Doc. 04–4242 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, March 15, 2004. The Madera Resource Advisory Committee will meet at the USDA Forest Service Office, North Fork, CA. The purpose of the meeting is: New RAC proposal presentations, review RAC post funding process, review Holistic Goal & Evaluation Criteria, Arrowhead presentation, and review Sierra Business Council book.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, March 15, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the USDA Forest Service Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) New RAC proposal presentations, (2) review RAC post funding process, (3) review Holistic Goal & Evaluation Criteria, (4) Arrowhead presentation, and (5) review of Sierra Business Council book. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 19, 2004.

Mark D. Lemon,

Acting District Ranger, Bass Lake Ranger District.

[FR Doc. 04–4237 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee (RAC) will meet in Reserve, New Mexico, on March 16, 2004, at 10 a.m. MST. The purpose of the meeting is to evaluate submitted projects and select projects for recommendation to be funded under Title II of the Secure Rural Schools and Community Self-Determination Act (Pub. L. 106–393), also called the "Payments to States Act."

DATES: The meeting will be held March 16, 2004.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico, 87830. Send written comments to Michael Gardner, Catron County Resource Advisory Committee, c/o Forest Service, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico, 88061–7863 or electronically to *mgardner01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212, or Janet Porter, Catron County RAC Chairperson, at (505) 533–6384 or *ctreasur@gilanet.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members unless provided for on the agenda. However, persons who wish to bring Public Law 106–393 related

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 may address the committee at times provided on the agenda in the morning and afternoon. To be considered at the March 16, 2004, RAC meeting, the project proposals must be submitted to Michael Gardner or Janet Porter, Catron County RAC Chairperson, by March 9, 2004, to enable distribution to all RAC members. Send written comments to Michael Gardner at Forest Service, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico, 88061–7863, or to Janet Porter at P.O. Box 407, Reserve, NM, 87830.

Dated: February 20, 2004.

Delbert J. Griego,

Acting Forest Supervisor, Gila National Forest.

[FR Doc. 04–4239 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 5 p.m. until 7 p.m. on Tuesday, March 9, 2004, in Petersubrg, Alaska. The purpose of this meeting is to discuss and potentially recommend for funding the costs of travel and registration for up to two committee members to attend the National Resource Advisory Committee meeting in Sparks, Nevada, March 25, 2004.

DATES: The meeting will be held commencing at 5 p.m. on Tuesday, March 9, 2004. It is anticipated that the meeting will adjourn by 7 p.m.

ADDRESSES: The meeting will be held at the Petersburg Ranger District office conference room, Federal Building, 12 North Nordic Drive, Petersburg, Alaska. Committee members from outside Petersburg will participate in the meeting via teleconference.

FOR FURTHER INFORMATION CONTACT: Brian Riggers, Acting Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *briggers@fs.fed.us*, or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us*. Contact either of these individuals for teleconference information. For further information on RAC history, operations, and the application process, a Web site is available at *http://www.fs.fed.us/r10/ro/payments*.

SUPPLEMENTARY INFORMATION: This meeting will focus on the discussion and potential recommendation for funding of the costs of travel and registration for up to two committee members to attend the National Resource Advisory Committee meeting in Sparks, Nevada, March 25, 2004. The meeting is open to the public. Teleconference capability is available (committee members from outside of Petersburg will participate via teleconference).

Dated: February 19, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–4243 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review 2002–2003: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit of the preliminary results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France.

EFFECTIVE DATE: February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Rachel Kreissl, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0409.

Background

On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France (*see* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 68 FR 39511 (July 2, 2003)). On July 28, 2003, Ugine & ALZ France, S.A., a French producer of subject merchandise, and petitioners (Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization) requested the Department conduct an administrative review. On August 22, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2002, through June 30, 2003 (*see* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 50750 (August 22, 2003)). The preliminary results of this administrative review are currently due no later than April 1, 2004.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 120 days, until no later than July 31, 2004. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: February 18, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–4296 Filed 2–25–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021704E]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Advisory Panel (AP) will hold a meeting.

DATES: The AP meeting will be held on March 11, 2004, from 10 a.m. to 5 p.m., approximately.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 8000 Tartak St., Isla Verde, Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The AP will meet to discuss the items contained in the following agenda:

(1) Election of Officers

(2) Draft Table 14 of the Draft Sustainable Fisheries Act Document

(3) Other Business

The meeting is open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 19, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4285 Filed 2–25–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021804D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Magnuson-Stevens Reauthorization Committee and Research Steering Oversight Committee in March 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on March 12 and 17, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Friday, March 12, 2004 at 9:30 a.m.* - Magnuson-Stevens Reauthorization Committee Meeting.

The Magnuson-Stevens Reauthorization Committee will review the 2004 discussion/staff draft bills released by Senator Olympia Snowe and Congressman Wayne Gilchrest, in addition to any other information that is relevant to reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Wednesday, March 17, 2004 at 9:30 a.m. - Research Steering Oversight Committee Meeting.

The Research Steering Oversight Committee will have a presentation on the status of the NMFS-funded cod-tagging program in the Northeast from an informal perspective to ensure project objectives are being met. The Committee will also complete work on a policy to incorporate new research results into the management process and initiate development of a policy concerning the disposition of catch and the use of days-at-sea when vessels are engaged in cooperative research. Finally, the Committee will finalize a list of priorities and activities for 2004.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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

Dated: February 19, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4273 Filed 2–25–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in The Socialist Republic of Vietnam

February 20, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection amending visa requirements.

EFFECTIVE DATE: March 22, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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.

On February 19, 2004, the Governments of the United States and Vietnam signed an agreement amending the existing Visa Arrangement for cotton, wool, and man-made fiber textiles and textile products subject to specific quota limits, as detailed in the notice and letter to the Commissioner, Bureau of Customs and Border Protection, published in the **Federal Register** on May 16, 2003 (see 68 FR 26575). The amended visa Arrangement establishes new provisions for the Electronic Visa Information System (ELVIS). This notice amends, but does not cancel, the notice and letter to the Commissioner of Customs, as amended, published in the **Federal Register** on July 30, 2003 (see 68 FR 44748).

A description of the textile and apparel categories in terms of categories within the Harmonized Tariff Schedule of the United States is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004).

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner, Bureau of Customs and Border Protection.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 20, 2004.

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 July 24, 2003, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Visa and ELVIS Arrangement, signed on February 19, 2004, between the Governments of the United States and Vietnam; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit entry into the customs territory of the United States (*i.e.* the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textiles and textile products subject to specific quota limits, as detailed in the directive dated May 12, 2003, and exported on or after March 22, 2004, for which the Government of Vietnam has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Should additional categories, part-categories or merged categories become subject to import quotas, the entire category(s), part-category(s) or merged category(s) shall be included in the coverage of this Arrangement.

A visa must accompany each shipment of the aforementioned textile products. The original visa in blue ink shall be stamped on the front of the original commercial invoice.

Visa Requirements

Each visa stamp will include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Vietnam is VN), and a six digit numerical serial number identifying the shipment; *e.g.*, 4VN123456.

2. The date of issuance. The date of issuance shall be the day, month, and year on which the visa was issued.

3. The original signature of the issuing official authorized by the Government of Vietnam.

4. The correct category(s), merged category(s), part category(s), quantity(s), and units of quantity in the shipment in the units(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTSUS), *e.g.*, "Cat. 340–510 DZ".

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. (For example, quota Category 340/640 may be visaed as "Cat. 340/640" or if the shipment consists solely of Category 340 merchandise, the shipment may be visaed as "Cat. 340," but not as "Cat. 640").

The Bureau of Customs and Border Protection shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Quantities shall be those determined by the Bureau of Customs and Border Protection.

If the visa is not acceptable then a new visa must be obtained from the Government of Vietnam or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Vietnamese Embassy in Washington, DC and presented to the Bureau of Customs and Border Protection before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the Bureau of Customs and Border Protection will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

Only the actual quantity in the shipment and the correct category will be charged to the restraint level.

ELVIS Requirements:

A. Each ELVIS transmission shall include the following information:

i. The visa number: The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Vietnam is VN), and a six digit numerical serial number identifying the shipment; *e.g.*, 4VN123456.

ii. The date of issuance: The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States. Quantities must be stated in whole numbers. Decimals or fractions will not be accepted.

iv. The quantity of the shipment in the correct units of quantity

v. The manufacturer ID number (MID)

B. Entry of a shipment shall not be permitted:

I. if an ELVIS transmission has not been received for the shipment from the Government of Vietnam;

II.if the ELVIS transmission for that shipment is missing any of the following information:

i) visa number

ii) category, part category, or merged category

iii) quantity

iv) unit of measure

v) date of issuance

vi) manufacturer ID number

III. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

i) visa number

ii) category, part category, or merged category

iii) unit of measure

IV. If the quantity being entered is greater than the quantity transmitted.

V. If the visa number has previously been used, except in the case of a split shipment, or cancelled, except when entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the Government of Vietnam is required before a shipment that has been denied entry

for one the circumstances mentioned above will be released.

D. Visa waivers will only be accepted if the shipment qualifies for a one-time special purpose shipment that is not part of an ongoing commercial enterprise. A visa waiver may be issued by the Department of Commerce at the request of the Vietnamese Embassy in Washington, DC. A visa waiver only waives the requirements to present an ELVIS transmission at the time of entry, and doesn't waive any quota requirements.

E. In the event of a systems failure, shipments will not be released for twenty-four hours or 1 calendar day. If system failure exceeds twenty-four hours or 1 calendar day, for the remaining period of the system failure the Bureau of Customs and Border Protection will release shipments on the basis of the visa data provided by the Government of Vietnam. Vietnam will retransmit all data that was affected by the systems failure when the system is functioning normally.

Shipments not requiring visas or ELVIS transmission:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $800 or less do not require a visa or an ELVIS transmission for entry and shall not be charged to Agreement levels.

Other Provisions:

The visa stamp remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action fall with 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. E4–407 Filed 2–25–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Retiree and Transition Programs Division, Air Force Personnel Center, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 29, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Retiree and Transition Programs Division (DPPT), Air Force Personnel Center, 550 C Street West, Suite 11, ATTN: Mr. Bruce O. Creller, Randolph AFB, TX 78150–4713.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Ms. Gail Weber at 210–565–2461.

Title, Form Number, and OMB Number: Air Force Instruction 36–2913, "Request for Approval of Foreign Government Employment of Air Force Members," OMB Number 0701–0134.

Needs and Uses: The information collection requirement is to obtain the information needed by the Secretary of the Air Force and Secretary of State on which to base a decision to approve/disapprove a request to work for a foreign government. This approval is specified by Title 37, United States Code, Section 908. This statue delegates such approval authority of Congress to the respective service secretaries and to the Secretary of State.

Affected Public: Individuals and Households.

Annual Burden: 215.

Number of Respondents: 215.

Responses per Respondent: 1.

Average Burden per Response: 1 Hour.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Air Force retired members and certain Reserve members who have gained jobs with a foreign government and who must obtain approval of the Secretary of the Air Force and Secretary of State to do so. Information, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements specifying whether or not the employee will be compensated; declaring if employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance to the foreign government; verifying that the member understands that retired pay equivalent to the amount received from the foreign government may be withheld if he or she accepts employment with a foreign government before receiving approval. Reserve members only must include a request to be reassigned to Inactive Status List Reserve Section (Reserve Section Code RB). After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing. If the signed letter is not included in the file, individuals reviewing the file cannot furnish the necessary information to the Secretary of the Air Force and Secretary of State on which a decision can be made. Requested information is necessary to maintain the integrity of the Request for Approval of Foreign Government Employment Program.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–4145 Filed 2–25–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, March 22, 2004, from 8:30 a.m. to 11:15 a.m. The closed Executive Session will be from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent,

U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because it will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: February 20, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–4236 Filed 2–25–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Lumitox Gulf L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Lumitox Gulf L.C. a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 4,689,305 issued August 25, 1987, entitled "Solid State Photometer Circuit", and U.S. Patent No. 4,950,594 issued August 21, 1990, entitled "Microbiological Assay Using Bioluminescent Organism'.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 12, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: February 19, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–4240 Filed 2–25–04; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 7911 (February 20, 2004).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., February 27, 2004.

CHANGES IN THE MEETING: On February 23, 2004, the Secretary of Energy suspended the proposed rule in order to seek further consultation from the Board and other interested stakeholders. For this reason, the Board is canceling the February 27, 2004 public meeting previously scheduled to hear testimony from Department of Energy (DOE) officials regarding the notice of proposed rulemaking on worker safety and health.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: February 24, 2004.

John T. Conway,

Chairman.

[FR Doc. 04–4363 Filed 2–24–04; 11:56 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 5, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 26, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, 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 *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 20, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Teacher Quality Enhancement Grants Program (TQE) Scholarship and Teaching Verification Forms for Scholarship Recipients.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act incur a service obligation to teach in a high-need school in a high-need LEA. This information collection consists of a contract to be executed when funds are awarded and a separate teaching verification form to be used by students to document their compliance with the contract's conditions.

Additional Information: This information collection cleared the Office of Management and Budget a few months ago. This is the second phase of this specific process. OMB anticipates this expedited final clearance.

Frequency: On occasion, semi-annually, annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, local, or tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,850.

Burden Hours: 3,250.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2461. 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 *vivian.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, contact Joe Schubart at his e-mail address *Joe Schubart@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. 04–4218 Filed 2–25–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; the Cooperative Civic Education and Economic Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.304A.

DATES: *Applications Available:* February 26, 2004.

Deadline for Transmittal of Applications: April 12, 2004.

Deadline for Intergovernmental Review: June 10, 2004.

Eligible Applicants: Organizations in the United States experienced in the development of curricula and programs in civic and government education and economic education for students in elementary schools and secondary schools in countries other than the United States, to carry out civic education activities.

Estimated Available Funds: $1,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. We may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Through the Cooperative Civic Education and Economic Education Exchange program, the Department of Education provides grants to improve the quality of civic education through cooperative civic education exchange programs with emerging democracies. For FY 2004 the competition for new awards focuses on statutory requirements we describe in the *Statutory Requirements* section of this notice.

Statutory Requirements: We will award grants to eligible applicants to—

(1) Provide to the participants from eligible countries—

(A) Seminars on the basic principles of United States constitutional democracy, including seminars on the major governmental institutions and systems in the United States, and visits to such institutions;

(B) Visits to school systems, institutions of higher education, and nonprofit organizations conducting exemplary programs in civics and government education in the United States;

(C) Translations and adaptations with respect to United States civics and government education curricular programs for students and teachers and, in the case of training programs for teachers, translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas; and

(D) Independent research and evaluation assistance to determine the effects of the Cooperative Education Exchange program on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy.

(2) Provide to the participants from the United States—

(A) Seminars on the histories and systems of government of eligible countries;

(B) Visits to school systems, institutions of higher education, and organizations conducting exemplary programs in civics and government education located in eligible countries;

(C) Assistance from educators and scholars in eligible countries in the development of curricular materials on the histories and governments of such countries that are useful in United States classrooms;

(D) Opportunities to provide onsite demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(E) Independent research and evaluation assistance to determine the effects of the Cooperative Education Exchange program assisted under this section on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy.

(3) Assist participants from eligible countries and the United States to participate in international conferences on civics and government education for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers.

Program Authority: 20 U.S.C. 6711–6716.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. We may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Organizations in the United

States experienced in the development of curricula and programs in civics and government education and economic education for students in elementary schools and secondary schools in countries other than the United States, to carry out civic education activities.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* a. *Eligible Countries:* A Central European country, Eastern European country, Lithuania, Latvia, Estonia, the independent states of the former Soviet Union as defined in section 3 of the FREEDOM Support Act (22 U.S.C. 5801), the Republic of Ireland, the province of Northern Ireland in the Republic of Ireland, the province of Northern Ireland in the United Kingdom, and any developing country (as such term is defined in section 209(d) of the Education for the Deaf Act) if the Secretary, with concurrence of the Secretary of State, determines that such developing country has a democratic form of government. A listing of the countries also is included in the application package.

b. *Primary Participants:* Primary participants in the Cooperative Education Exchange Program shall be leaders in the areas of civics and government education, including teachers, curriculum and teacher training specialists, scholars in relevant disciplines, educational policymakers, and government and private sector leaders from the United States and eligible countries.

IV. Application and Submission Information

1. *Address to Request Application Package:* Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 202c, Washington, DC 20208. Telephone: (202) 219–2027 or by e-mail: *rita.foy.moss@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–576–7734 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the Cooperative Civic Education and Economic Education Exchange program competition. Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: February 26, 2004.

Deadline for Transmittal of Applications: April 12, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 10, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* The regulations on determining allowable costs are set out in 34 CFR part 80. We reference additional applicable regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project For Electronic Submission Of Applications: We are continuing to expand our pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Cooperative Civic Education and Economic Education Exchange Program—CFDA 84.304A—is one of the programs included in the pilot project. If you are an applicant under the Cooperative Civic Education and Economic Education Exchange Program competition, you may submit your

application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs, (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-Application system.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Cooperative Civic Education and Economic Education Exchange Program and you are prevented from submitting your application on the application deadline because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if--

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Cooperative Civic Education and Economic Education Exchange Program at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 20 U.S.C. 7247.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following performance measure to assess the effectiveness of the Cooperative Civic Education and Economic Education Exchange Program: The percentage of teachers participating in training programs or professional development activities under the program (in the United States and in participating foreign countries) who have demonstrated improved quality of instruction will increase. This measure constitutes the Department of Education's indicator of success for this program. Consequently, applicants are advised to give careful consideration to the outcomes in conceptualizing the design, implementation, and evaluation of a proposed project. If funded, applicants will be asked to collect and to report data about progress toward this goal in their annual performance reports.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, N.W., room 202c, Washington, DC 20208. Telephone: (202) 219-2027 or by e-mail: *rita.foy.moss@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call 1–877–576–7734 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the

following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: February 23, 2004.

Deborah A. Price,

Deputy Undersecretary, Office of Safe and Drug-Free Schools.

[FR Doc. 04–4297 Filed 2–25–04; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–103]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 5, 2004.

Take notice that on February 2, 2004, ANR Pipeline Company (ANR) tendered for filing and approval three amendments to existing negotiated rate service agreements between ANR and NJR Energy Services Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective February 2, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–401 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–16–001]

Cypress Gas Pipeline, LLC; Notice of Refund Report

February 5, 2004.

Take notice that on January 20, 2004, Cypress Gas Pipeline, LLC (Cypress) tendered for filing a refund report showing the refunds made to affected customers in connection with the Commission approved Stipulation and Agreement filed by Cypress on November 25, 2003. Cypress states that on December 18, 2003, it had issued all required refunds on all amounts collected above the approved settlement rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number including the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Comments Date: February 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–403 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–63–000]

Dominion Transmission, Inc.; Notice of Application

February 19, 2004.

Take notice that on February 11, 2004, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia, filed in Docket No. CP04–63–000 an application for authorization to own, operate and maintain, and abandon certain facilities located in Pennsylvania, Ohio, and West Virginia, pursuant to sections 7(c) and 7(b) of the Natural Gas Act, as amended, and part 157 of the Commission's rules and regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. As a result of an internal review conducted pursuant to the July 11, 2003, Stipulation and Agreement in Docket No. CP01–440–000,[1] DTI requests that the Commission clarify or confirm certificate authorization for continued ownership and operation of various facilities that DTI cannot show were authorized pursuant to Commission regulations in effect at the time of each facility's installation. The filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding the application should be directed to Anne E. Bomar, Managing Director, Transmission Rates and Regulation, Dominion Resources, Inc., 120 Tredegar Street, Richmond, Virginia 23219, at (804) 819–2134 and with fax at (804) 819–2064.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 11, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to

[1] 104 FERC ¶ 61,073 (2003).

intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: March 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–400 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–170–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 19, 2004.

Take notice that on February 17, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of February 1, 2004.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. ESNG asserts that the costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule CFSS. ESNG indicates this tracking filing is being made pursuant to section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–399 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Entergy Asset Management, Inc., Entergy Power Ventures, L.P., Warren Power, LLC, and East Texas Electric Cooperative, Inc.; Notice of Filing

February 19, 2004.

Take notice that on February 18, 2004, Entergy Asset Management, Inc., Entergy Power Ventures, L.P. (EPV) Warren Power LLC (WP) and East Texas Electric Cooperative, Inc. (ETEC) (collectively, Applicants) filed an application requesting all necessary authorizations under section 203 of the Federal Power Act, 16 U.S.C. 824b, for Applicants to engage in the transfer of a 9.1% undivided ownership interest in the jurisdictional facilities associated with the 550 MW Harrison County Power Project from EPV to ETEC and a 25% undivided ownership interest in the jurisdictional facilities associated with the 300 MW Warren power plant from WP to ETEC. Applicants have requested privileged treatment of the Ownership Interest Purchase Agreement submitted as an appendix to the application.

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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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: March 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–391 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–082]

Idaho Power Company; Notice Rejecting Request for Rehearing

February 19, 2004.

1. On January 20, 2004, Idaho Power Company (Idaho Power) filed a request for rehearing of a December 19, 2003, letter by the Director, Office of Energy Projects (Director), responding to Idaho Power's objections with respect to proposed meetings between representatives of the Commission and Indian tribes with an interest in the relicensing of Idaho Power's Hells Canyon Hydroelectric Project.

2. Section 313(a) of the Federal Power Act, 18 U.S.C. 8251(a), provides that requests for rehearing may be filed only by persons aggrieved by an order issued by the Commission. Moreover, rule 713 of the Commission's rules of practice and procedure, 18 CFR 385.713 (2004), provides that a rehearing request may be sought after a final decision or other final order in a proceeding. The Director's December 19, 2003, letter is not a final decision or order. It does not impose an obligation on any party or adjudicate anyone's substantive rights; rather, the letter simply responds to questions regarding proposed procedures. That being the case, Idaho Power is not aggrieved by the letter. Moreover, a challenge to the Commission's procedures will be ripe only after the Commission has acted on the merits of Idaho Power's application, not at this preliminary stage.

3. For the above reasons, rehearing of the December 19, 2004, letter does not lie, and Idaho's Power's request for rehearing is rejected.[1]

4. This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2003).

Magalie R. Salas,

Secretary.

[FR Doc. E4–394 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Contemporaneous with its request for rehearing, Idaho Power filed a procedural motion that it requested be considered should the Commission determine that rehearing did not lie. That motion is pending.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–374–001]

Invenergy TN, LLC; Notice of Filing

February 19, 2004.

Take notice that on February 13, 2004, Invenergy TN LLC (Invenergy) tendered for filing pursuant to section 205 of the Federal Power Act Substitute Original Sheet No. 1 to its FERC Electric Rate Schedule that amends Original Sheet No. 1 submitted in its application filed December 31, 2003, for authorization to sell, as amended, energy and capacity at market-based rates, and to resell transmission rights. Invenergy TN LLC requests an effective date of June 1, 2004.

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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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: March 5, 2004.

Magalie Salas,

Secretary.

[FR Doc. E4–393 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–154–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 5, 2004.

Take notice that on February 2, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheets, proposed to become effective March 3, 2004:

Third Revised Sheet No. 54
Sixth Revised Sheer No. 55

In an effort to ensure that Iroquois has sufficient financial coverage in the event of default by a shipper, Iroquois proposes in the instant filing to revise certain creditworthiness sections effecting its Park and Loan Service (PALS).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested State regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–404 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–474–007 and RP01–17–009 and RP03–174–004]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

February 19, 2004.

Take notice that on February 13, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets: (i) Second Sub First Revised Sheet No. 262A, with an effective date of July 1, 2003, and (ii) Third Revised Sheet No. 263 and Second Revised Sheet No. 264, both with an effective date of March 1, 2004.

Maritimes states that the purpose of this filing is to comply with the Commission's order issued in the captioned dockets on January 29, 2004 (January 29 Order). Maritimes states that it is making changes to its General Terms and Conditions in order to credit and charge OBA parties a blended rate for imbalances on the system, regardless of whether they trade the imbalances, and to clarify that its restriction on trading imbalances across Posted Points of Restriction only applies to imbalances created while a Posted Point of Restriction was in effect.

Maritimes states that it has served this filing on all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–395 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–155–000]

Northern Natural Gas Company; Notice of Tariff Filing

February 5, 2004.

Take notice that on January 30, 2004, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets set forth in Appendix A to the filing.

Northern states that the tariff sheets are being filed to effectuate changes in the rates and terms applicable to Northern's jurisdictional services. The effect of the rate case is an overall increase in revenues of approximately $29.6 million above the annual revenue requirement established in Northern's 2003 rate case.

The changes reflected in the Revised Tariff Sheets to be effective March 1, 2004, are required to effectuate the rate increase and to make certain changes to Northern's tariff. In addition, Northern proposes Pro Forma Tariff Sheets which reflect further changes to become effective on a prospective basis following a Commission order on the merits or a settlement of this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–405 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–171–000]

Portland Natural Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

February 19, 2004.

Take notice that on February 17, 2004, Portland Natural Gas Transmission System (PNGTS) tendered for filing as

part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached to the filing, to become effective on April 1, 2004.

PNGTS states that the purpose of its filing is to establish a new firm transportation service, *i.e.*, "Hourly Reserve Service" (or "HRS"), which will be provided under a new Rate Schedule HRS. PNGTS states that it is proposing HRS service to provide additional options and flexibility to shippers, such as electricity generators, or those serving electricity generators, whose intra-day delivery requirements may not be uniform and who may require accelerated flow rates and minimum delivery pressures during particular periods of the gas day. PNGTS states that its provision of HRS service will not impair its ability to provide existing FT service and that PNGTS will provide HRS service from available system capacity; therefore no new facilities construction is required.

PNGTS states that copies of this filing are being served on all jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–389 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–129–000]

Southern California Water Company; Notice of Filing

February 19, 2004.

Take notice that on November 19, 2002, Southern California Water Company (SCWC) tendered for filing a resubmission of an SCWC compliance filing initially filed on November 12, 2002. SCWC states that the resubmission does not contain any confidential or otherwise protected materials. SCWC explains that its November 12, 2002, filing may have contained confidential or otherwise protected materials that should not be available for public inspections. Therefore, SCWC requests that the Commission remove the original version from the eLibrary system and the Public Reference Room.

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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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: March 5, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–392 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–169–000]

Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

February 19, 2004.

Take notice that on February 13, 2004, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective on March 15, 2004.

Stingray states that the purpose of this filing is to revise Stingray's Rate Schedule PAL to allow park and lending transactions to be contracted for on the Stingray system and to make corresponding changes in Stingray's General Terms and Conditions and Form of Service Agreement related to implementing new service options under Rate Schedule PAL.

Stingray states that copies of this filing have been sent to all of Stingray's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission

strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–398 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–168–000]

Trailblazer Pipeline Company; Notice of Filing Penalty Revenue Crediting Report

February 18, 2004.

Take notice that on February 13, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Penalty Revenue Crediting Report.

Trailblazer states that the purpose of this filing is to inform the Commission of penalty revenues it has received in the periods ended September 30, 2003, and December 31, 2003.

Trailblazer states that copies of the filing are being mailed to its customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Protests Date: February 26, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–397 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–59–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

February 5, 2004.

Take notice that on January 29, 2004, Transcontinental Gas Pipe Line Corporation (Transco) pursuant to and in accordance with section 7(b) of the Natural Gas Act and part 157 of the Commission's regulations, tendered for filing an application, in abbreviated form, in Docket No. CP04–59–000 for an order permitting and approving the abandonment of storage service under Rate Schedule LG–S provided to Southern Connecticut Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: February 19, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–406 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–167–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 19, 2004.

Take notice that on February 13, 2004, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on April 1, 2004:

Seventh Revised Sheet No. 5H
Original Sheet No. 5H.01
Sixteenth Revised Sheet No. 6B
Original Sheet No. 6B.01
Fifth Revised Sheet No. 87C

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Load Management Cost Reconciliation Adjustment (LMCRA) in accordance with section 154.403 of the Commission's rules and regulations, 18 CFR 154.403 (2002) and section 27 of the General Terms and Conditions of Viking's FERC Gas Tariff and to make minor housekeeping changes related to the LMCRA.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions

or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–396 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–37–000, CP04–44–000, CP04–45–000, and CP04–46–000]

Corpus Christi LNG, L.P. and Cheniere Corpus Christi Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Cheniere Corpus Christi Lng Terminal and Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

February 20, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Cheniere Corpus Christi LNG Terminal and Pipeline Project involving construction and operation of facilities by Corpus Christi LNG, L.P. and Cheniere Corpus Christi Pipeline Company (collectively referred to as Cheniere Corpus Christi) in San Patricio and Nueces Counties, Texas.[1] These facilities would consist of a liquefied natural gas (LNG) import terminal and storage facilities, and 24 miles of 48-inch-diameter pipeline. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice is being sent to residents within 0.5 mile of the proposed LNG terminal; landowners along the proposed pipeline route; Federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; local libraries and newspapers; and intervenors in this proceeding. We[2] request that state and local government representatives notify their constituents of this proposed action and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Cheniere Corpus Christi provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Cheniere Corpus Christi proposes to import, store, and vaporize on average about 2,600 million cubic feet per day of LNG at its terminal facility on the northern shoreline of Corpus Christi Bay, east of Portland, Texas. The proposed pipeline, extending from the LNG terminal to north of Sinton, Texas, would be capable of transporting about 2,700 million cubic feet per day of imported natural gas to markets throughout the United States, via interconnections with a number of existing interstate pipeline systems.

Cheniere Corpus Christi seeks authority to construct and operate:

- A new marine basin at the northwestern end of the existing La Qunita Channel, consisting of a dredged maneuvering area and two protected berths, equipped to unload up to 300 LNG ships per year, including three tugs and two line-handling boats;
- Three liquid unloading arms, one vapor return arm, and two LNG transfer lines for each dock;
- Three all-metal, double-walled, single containment, top entry LNG storage tanks, each with a nominal working volume of approximately 160,000 cubic meters (1,006,400 barrels equivalent), surrounded by earthen dikes capable of containing 110 percent of the gross tank volume;
- Three in-tank LNG pumps, an LNG vaporization and send out system consisting of 16 high pressure LNG send out pumps, 16 high pressure submerged combustion LNG vaporizers, three boil-off gas compressors and a boil-off gas condensing system, and two vapor return blowers, together with LNG terminal control instrumentation and safety systems; and on-site natural gas metering facilities;
- Various buildings at the LNG terminal site to house administrative offices, warehouse/maintenance, terminal control system, utilities, customs, and a gatehouse;
- 24 miles of 48-inch-diameter natural gas pipeline;
- Seven metering stations/delivery points, and pipeline interconnections with the following existing natural gas pipeline systems: Texas Eastern Transmission Company, Gulf South Pipeline Company, Channel Pipeline Company, Florida Gas Transmission Company, Kinder Morgan Texas Pipeline Company, Transcontinental Gas Pipeline Corporation, and Natural Gas Pipeline Company of America; and
- Three mainline valves, and a pig launcher facility at the LNG terminal and receiver facility at the northern pipeline terminus.

Construction of the proposed LNG terminal would also require construction of nonjurisdictional facilities, consisting of about 1.6 miles of new 138 kV overhead electric power line and an electrical substation and about 1.6 miles of new potable water line. These facilities are not under jurisdiction of the Commission but they will be addressed in the EIS as related nonjurisdictional facilities.

Cheniere Corpus Christi would like to have the project constructed and operational prior to the 2007 winter

[1] On December 22, 2003, Corpus Christi LNG, L.P. filed its application with the Commission under Section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, and Cheniere Corpus Christi Pipeline Company filed its application under Section 7 of the NGA and Parts 157 and 284 of the Commission's regulations.

[2] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects (OEP).

heating season. The general location of the facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the proposed LNG terminal would utilize a total of about 1,078 acres of land and water. On-shore, permanent operation of the terminal would require use of about 187 acres. About 494 acres on-shore would be affected temporarily during construction. An additional 316 acres on-shore would be retained for exclusion zones, but would not be affected by either construction or operations of the facility. Off-shore, about 81 acres of open water would be used for construction and operation of the marine basin and berthing facilities. The material dredged during creation of the marine basin would be placed over existing bauxite residue beds and tailings ponds on a 385 acre area owned by Alcoa, Inc., on the north side of the LNG storage facility.

Construction of the proposed pipeline would affect a total of about 390 acres of land. A 120-foot-wide nominal construction right-of-way would be used, plus additional temporary extra work spaces, and the permanent pipeline easement would be 50-feet-wide. Operation would require use of about 166 acres, including about 4 acres necessary for aboveground facilities. At the end of construction, the remaining 224 acres of land along the pipeline route would be restored to its previous condition and use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives.

With this notice, we are soliciting input from the public and interested agencies to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action. To ensure that your scoping comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

We are also asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EIS. These agencies, especially the U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may choose to participate once they have evaluated the proposal relative to their responsibilities.

Our independent analysis of the proposed project will be included in a draft EIS. The draft EIS will be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, Native American tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing the final EIS. In addition, we will consider all comments on the final EIS when we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general resource headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Cheniere Corpus Christi. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:
  - —Assessment of dredging for the new marine basin, and use of dredged material to cover existing bauxite residue beds and tailings ponds at LNG terminal site.
  - —Location of LNG storage tanks within an area used for bauxite storage.
  - —Conversion of prime farm land for aboveground facilities associated with the pipeline.
- Water Resources and Wetlands:
  - —Handling of storm water captured in LNG storage dikes, and water generated during LNG vaporization process.
  - —Assessment of impacts construction and operation of the LNG terminal and pipeline would have on wetlands.
  - —Potential impacts on surface waterbodies.
- Vegetation and Wildlife:
  - —Impacts of clearing of native vegetation at the LNG terminal and along pipeline.
  - —Assessment of impacts on state and/or Federally-listed threatened and endangered species at the LNG terminal and along the pipeline.
  - —Assessment of impacts the creation of the LNG marine terminal may have on shellfish and finfish within the essential fish habitat of Corpus Christi Bay.
- Land Use and Recreation:
  - —Evaluation of project's consistency with coastal zone management area guidelines.
  - —Assessment of impacts on agricultural land crossed by the pipeline.
  - —Visual impacts associated with new LNG storage tanks.
- Socioeconomics:
  - —Assessment of environmental justice in location of LNG terminal site.
  - —Assessment of impact and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
  - —Assessment of impacts of LNG ship traffic on the Port of Corpus Christi.
- Cultural Resources:
  - —Assessment of archaeological sites at the LNG terminal.
  - —Native American concerns.
- Air and Noise Quality:
  - —Assessment of impacts of construction and operation of the LNG terminal and pipeline on local air quality.
  - —Assessment of noise from construction and operation of the LNG terminal and pipeline facilities.
- Reliability and Safety:
  - —Assessment of hazards associated with the transport, unloading, storage, and vaporization of LNG.
  - —Assessment of security associated with LNG ship traffic and an LNG import terminal.
- Alternatives:
  - —Assessment of the use of existing LNG import terminals and natural gas pipeline systems to achieve project goals.
  - —Evaluation of alternative sites for the LNG terminal, including offshore sites.
  - —Evaluation of pipeline route

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference, Room 2A or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to the Cheniere Corpus Christi.

alternatives.
- Cumulative Impacts:
  —Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area, including other proposed LNG facilities in Corpus Christi Bay and the proposed Port of Corpus Christi La Quinta Container Terminal.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative terminal locations or pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket Nos. CP04–37–000, *et al.*
- Mail your comments so that they will be received in Washington, DC on or before March 26, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

Public Scoping Meeting and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the project area. The location and time for this meeting is listed below: Wednesday, March 24, 2004, 7 p.m., Portland Community Center, 2000 Billy G. Webb Drive, Portland, Texas 78374, Telephone: (361) 777–3301.

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

Also on Wednesday, March 24, 2004, starting at 1 p.m., we will be conducting a visit to the LNG terminal site. Anyone interested in participating in the site visit should meet at the lobby of the Days Inn, 133 U.S. Highway 181, Portland, Texas 78374. Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Form included in appendix 3. If you do not return this form or send in written comments, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERConlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–410 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–47–000, CP04–38–000, CP04–39–000, and CP04–40–000]

Sabine Pass LNG, L.P., Cheniere Sabine Pass Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Sabine Pass, LNG, and Pipeline Project and Request for Comments on Environmental Issues and Notice of Public Scoping Meetings and Site Visit

February 20, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Sabine Pass LNG and Pipeline Project involving construction and operation of facilities proposed by Sabine Pass LNG, L.P. and Cheniere Sabine Pass Pipeline Company (collectively referred to as Cheniere Sabine) in Cameron Parish, Louisiana.[1] These facilities would consist of a liquefied natural gas (LNG) import terminal and storage facilities and approximately 16 miles of 42-inch-diameter pipeline in Cameron Parish.[2] This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice is being sent to residents within 0.5 mile of the proposed LNG terminal facilities; potentially affected landowners along the proposed pipeline route; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We[3] have asked state and local government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Cheniere Sabine provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site at *www.ferc.gov*.

Summary of the Proposed Project

Cheniere Sabine proposes to build a new LNG import, storage, and vaporization terminal in a rural part of Cameron Parish, Louisiana, across the Sabine Pass Channel from Sabine Pass, Texas. The LNG import terminal would import, store, and vaporize an average of approximately 2,600 million standard cubic feet per day (MMscfd) of LNG, with an installed capacity of 2,880 MMscfd, for supply to U.S. natural gas markets. Cheniere Sabine seeks authority to construct and operate the following new facilities:

- A new marine basin connected to the Sabine Pass Channel that would include a ship maneuvering area and two protected berths to unload up to 300 LNG ships per year with a ship capacity ranging up to 250,000 cubic meters (m^3) of LNG;
- Two 30-inch-diameter stainless steel insulated LNG transfer lines to transfer the LNG from the berth facilities to the LNG storage tanks;
- Three all-metal, double-walled, single containment, top-entry LNG storage tanks, each with a nominal working volume of approximately 160,000 m^3 and each with secondary containment dikes to contain 110 percent of the gross tank volume;
- Sixteen high-pressure submerged combustion LNG vaporizors with a capacity of approximately 180 MMscfd each, as well as other associated vaporization equipment, including pumps, boil-off gas compressors, instrumentation, and safety systems;
- Ancillary utilities, buildings, and service facilities, including hazard detection and fire response systems;
- Approximately 16 miles of 42-inch-diameter natural gas pipeline extending from the LNG import terminal to an interconnection with four existing pipelines at Johnson's Bayou;
- Three metering stations, one at the LNG terminal site, one at an interconnection with Natural Gas Pipeline Company of America, and one at the interconnection with the existing pipelines at Johnson's Bayou; and
- Associated pipeline facilities including a pig launcher receiver facility; and three mainline valves, and one side valve.

Construction of the LNG terminal facilities would take approximately 3 years, and the pipeline would take approximately 4 to 6 months. Cheniere Sabine proposes to place the project in service before the 2007 winter heating season. The general location of the proposed project facilities is shown in appendix 1.[4,5]

In addition, certain nonjurisdictional electric and water line facilities would be required for operation of the LNG terminal and would be subject to review and approval by the appropriate state and Federal agencies. The Jefferson Davis Electric Cooperative would construct a 23.6-mile, 230 kilovolt (kV) electric transmission line that would extend from its existing substation near the Intracoastal Waterway south across the eastern edge of Sabine Lake to the LNG terminal site. Cameron Parish Waterworks, District 10, would construct an approximate 8.6-mile, 8-inch-diameter potable water line that will extend from its facilities near Johnson's Bayou west along the northern edge of State Highway 82 to the LNG terminal site.

Land Requirements for Construction

Cheniere Sabine has acquired 568 acres of land, formerly used for dredge spoil placement by the U.S. Army Corps of Engineers, for the proposed LNG terminal facility. Of this total, about 291.7 acres would be affected during construction, comprising 264.9 acres of land and 26.8 acres of water. Operation

[1] On January 2, 2004, the Commission gave notice that the applications for Sabine Pass LNG L.P. and Cheniere Sabine Pass Pipeline Company were filed on December 22, 2003, under section 3(a) and section 7(c) of the Natural Gas Act and part 153, part 157, and part 284 of the Commission's regulations.

[2] On February 10, 2004, the Commission gave notice that Sabine Pass Pipeline Company filed an amendment to its application on February 6, 2004, that reflected a shortening of the length of the originally proposed pipeline from approximately 120 miles to approximately 16 miles, a reduction of the diameter of the pipeline from 48 inches to 42 inches, and a decrease in the maximum capacity of the pipeline from 2.7 to 2.6 billion cubic feet per day.

[3] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[4] Requests for detailed maps of the facilities may be made to the company directly by calling 1–800–690–1361. Be as specific as you can about the location(s) of your area(s) of interest.

[5] The appendices referenced in this notice are not being printed in the **Federal Register**E. Copies are available on the Commission's Web site (*http//www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference Room 2A or call (202) 502–8371. Copies of the appendices were sent to all those receiving this notice in the mail.

of the LNG facility would affect about 236.6 acres, comprising 210.1 acres of land and 26.5 acres of water.

Cheniere Sabine proposes to use a 120-foot-wide construction right-of-way and a 50-foot-wide operational right-of-way for the pipeline. Construction of the pipeline would disturb about 245.8 acres of land and would include land required for the pipeline construction right-of-way, additional temporary workspaces, access roads, meter stations, and other associated aboveground facilities. Total operational land requirements would be approximately 105 acres for the new permanent right-of-way, access roads, and above ground facilities.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity, or an import authorization under section 3 of the Natural Gas Act. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives.

With this notice, we are soliciting input from the public and interested agencies to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action. We are also asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EIS. These agencies, especially the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Marine Fisheries Service, and the U.S. Coast Guard, may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice.

Our independent analysis of the proposed project will be included in a draft EIS. The draft EIS will be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, Native American tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing the final EIS. In addition, we will consider all comments on the final EIS when we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under the resource headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Cheniere Sabine. This preliminary list of issues may be changed based on your comments and our analysis.

Geology and Soils

- Assessment of dredged material management plan, including the potential for beneficial uses of dredged material.

Water Resources and Wetlands

- Assessment of construction effects on quality of surface and groundwater.
- Assessment of effects of construction and operation on the Chicot sole-source aquifer.
- Potential effects of freshwater discharges on the salinity of receiving waterbodies.
- Effects of dredging approximately 4.5 million cubic yards of clays for the marine basin and berthing area.
- Assessment of construction and operation effects on wetlands at the terminal site and along the pipeline route.
- Potential impacts of a thermal (coldwater) discharge.

Fish, Wildlife, and Vegetation

- Effect on commercial and recreational fisheries of Sabine Lake and other affected waterbodies.
- Potential effect of electric transmission lines on shore birds and other birds.
- Effects of lighting and towers on migratory birds.
- Effects of construction on waterfowl habitat.

Endangered and Threatened Species

- Potential effects on federally listed species including piping plover, brown pelican, and bald eagle; Kemp's Ridley, loggerhead, green, hawksbill, and leatherback sea turtles; gulf sturgeon and smalltooth sawfish; and sperm whale.
- Effects on essential fish habitat.

Land Use, Recreation and Special Use Areas, and Visual Resources

- Potential impact on public access to the Sabine Pass Lighthouse, which is listed on the National Register of Historic Places.
- Effects of pipeline construction on residences within 50 feet of the proposed right-of-way.
- Consistency with coastal zone management plan.
- Visual impacts of new LNG storage tanks.

Socioeconomics

- Impact of construction equipment and construction worker vehicles on local traffic.
- Effects of LNG ship traffic.
- Effects of construction workforce demands on public services and housing.

Cultural

- Effects on archaeological sites and historic properties.

Air Quality and Noise

- Effects of construction and operation on local air quality and the noise environment.
- Effects of LNG ship emissions on air quality.

Reliability and Safety

- Safety and security of the terminal and pipeline.
- Safety related to LNG shipping.

Cumulative Impacts

- Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the Sabine Pass area. At present, we are aware of one other LNG project, the ExxonMobil Golden Pass LNG and Pipeline Project, in the vicinity of the proposed Sabine Pass LNG and Pipeline Project. As currently proposed, the Golden Pass LNG Project site is approximately 2 miles west of the Cheniere Sabine LNG site on the west bank of the Port Arthur ship channel in Jefferson County, Texas. This project would also involve the construction of approximately 75 miles of pipelines, extending from the LNG site through Jefferson, Orange, and Newton Counties, Texas to the vicinity of Starks, Louisiana in Calcasieu Parish, Louisiana.

Alternatives

- Evaluation of no action alternative, alternatives using other existing LNG terminals or pipeline systems, alternative sites for the proposed LNG

terminal, and alternative pipeline routes.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP04–38–000 *et al.* and CP04–47–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before March 22, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages you to file your comments electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend a public scoping meeting that we will conduct in the area. The location and time for this meeting is listed below:

March 11, 2004, 7 p.m., Johnson Bayou Recreation Center, 135 Berwick Road, Cameron, LA 70631, telephone: 337–569–2204.

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. Transcripts of the meetings will be made so that your comments are accurately recorded.

We will also be conducting a limited site visit to the LNG terminal site and pipeline route on the day of the meeting. Anyone interested in participating in the site visit should meet at the Johnson's Bayou Recreation Center at 8 a.m. on March 11, 2004. Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at 1–866–208 FERC (3372).

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[6] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Form included in appendix 3. If you do not return this form or send in written comments, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–411 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

[6] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

February 5, 2004.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement on new license application.

b. *Project No.:* P–2233–043.

c. *Date Filed:* February 2, 2004.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River, in the Town of West Linn, Clackamas County, Oregon.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602.

h. *Applicant Contact:* Julie A. Keil, Director, Hydro Licensing, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, 503–464–8864

i. *FERC Contact:* John Blair, 202–502–6092, *john.blair@ferc.gov.*

j. *Deadline for Filing Comments:* March 5, 2004. Reply comments: March 15, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

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. Portland General Electric Company filed the Settlement Agreement on behalf of itself and the U.S. Fish & Wildlife Service, NOAA Fisheries (formerly National Marine Fisheries Service), Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, Confederated Tribes of Warm Springs Reservation of Oregon, Confederated Tribes of Siletz Indians of Oregon, Confederated Tribes of the Grand Ronde Community of Oregon, American Rivers, Oregon Trout, The Native Fish Society, and Trout Unlimited. The purpose of the Settlement Agreement is to resolve among the signatories issues regarding the licensing of the Willamette Falls Project. These parties represent the major stakeholders with interests affected by the relicensing of the Project. All Parties have agreed that the Settlement Agreement is fair and reasonable and in the public interest. On behalf of the Parties, PGE requests that the Commission approve the Settlement Agreement and adopt it as part of the new license without material modification.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at; *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–402 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

February 20, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to Joint Application for Approval of Transfer of License.

b. *Project No:* 4784–066.

c. *Date Filed:* Application filed December 11, 2003; amendment filed January 30, 2004.

d. *Applicants:* UtilCo Group Inc.; UtilCo SaleCo, LLC; Topsham Hydro Partners Limited Partnership; DaimlerChrysler Services North America LLC (DCSNA), as successor in interest to Chrysler Capital Corporation (Chrysler Capital), Chrysler Financial Corporation (CFC), and Chrysler Financial Company L.L.C. (CFC LLC).

e. *Name and Location of Project:* The Pejepscot Hydroelectric Project is located on the Androscoggin River in the town of Topsham, in Sagadahoc, Cumberland and Androscoggin Counties, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Transferor: Victor A. Contract, Orrick, Herrington & Sutcliffe LLP, 3050 K Street, NW., Washington, DC 20007, (202) 339–8495. For Transferee: Brogan Sullivan, Assistant General Counsel, UtilCo Group Inc. c/o Aquila, Inc., 20 W. Ninth Street, Kansas City, MO 64105, (816) 467–3659.

h. *FERC Contact:* Lynn R. Miles (202) 502–8763.

i. Deadline for filing comments, protests, and motions to intervene: March 19, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–4784–066) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The amendment to the application requests approval of partial transfers of the license to substitute as a co-licensee CFC LLC for CFC and DCSNA for CFC LLC. The partial transfers resulted from a series of mergers. (The initially-filed application's request for approval of a partial transfer of the license to substitute UtilCo SaleCo, LLC, for UtilCo Group Inc., as a co-licensee was decided separately to accommodate the schedule for closing the sale underlying that initially-requested partial transfer.)

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the project number excluding the last three digits (P–4784) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–409 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000, CP03–303–000, CP03–304–000, PF03–1–000 and CP03–301–000]

Cheyenne Plains Gas Pipeline Company, LLC and Colorado Interstate Gas Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Cheyenne Plains Pipeline Project

February 20, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared the final environmental impact statement (EIS) on the natural gas pipeline facilities proposed by Cheyenne Plains Gas Pipeline Company, LLC (CPG) and Colorado Interstate Gas Company (CIG) in the above-referenced dockets. The proposed project, referred to as the Cheyenne Plains Pipeline Project, is located in various counties in Colorado and Kansas.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that, if the project is constructed as modified and with the appropriate mitigation measures as recommended, it would have limited adverse environmental impact. The information in the final EIS, along with the information contained in the Commission's Preliminary Determination on Non-Environmental Issues for the project, will be considered by the Commission when making a final decision on the project.

The U.S. Department of Agriculture, Forest Service (FS) is participating as a cooperating agency in the preparation of the final EIS because the FS will be issuing its own Record of Decision (ROD) on whether or not to issue Special Use Authorizations for the portion of the pipeline that crosses the Pawnee National Grassland (PNG). After issuance of the FS' ROD, there is a 45-day period to appeal the FS' decision under Title 36 Code of Federal Regulations (CFR) Part 215, Notice, Comment and Appeal Procedures for National Forest System Projects and Activities. In accordance with Title 36 CFR 215.13, only individuals and organizations who submitted substantive written or oral comments during the comment period on the draft EIS for the proposed Cheyenne Plains Pipeline Project (and specifically addressed the portion on the PNG) may appeal the Regional Forester's decision as documented in the ROD.

The U.S. Fish and Wildlife Service (FWS) is also a cooperating agency in the preparation of the final EIS because the project has the potential to affect endangered species, migratory birds, wildlife, and habitat.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities:

- A total of 379.8 miles of 36-inch-diameter mainline, with 189.0 miles in Colorado (Weld, Morgan, Washington, Yuma, and Kit Carson Counties) and 190.8 miles in Kansas (Sherman, Wallace, Logan, Scott, Lane, Finney, Hodgeman, Ford, and Kiowa Counties);
- 0.2 mile of 20-inch-diameter lateral [1] (Sand Dune Lateral) in Kiowa County, Kansas;
- 4.2 miles of 30-inch-diameter lateral (South Rattlesnake Creek Lateral) in Kiowa County, Kansas;
- 3.0 miles of 8-inch-diameter lateral (Cossell Lake Lateral) in Kiowa County, Kansas;
- One 2,443-horsepower (hp) jumper compressor installed within CIG's existing compressor station located at its Cheyenne Hub in Weld County, Colorado;
- Two 10,310-hp turbine compressors installed in a new CPG compressor station at the Cheyenne Hub;
- Nine new interconnects [2] with existing pipeline systems. These interconnects would include metering facilities and would consist of two receipt points, one each with CIG and Wyoming Interstate Company at the Cheyenne Hub in Weld County, Colorado, and seven delivery points, one with Kinder Morgan Interstate Pipeline Company in Scott County, Kansas, one with Natural Gas Pipeline Company of America in Ford County, Kansas, and one each with Southern Star Central Gas Pipeline, LLC, ANR Pipeline Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, and Kansas Gas Service Company in Kiowa County, Kansas;
- Two new gas treatment plants, each consisting of an amine and glycol processing train, one at the Cheyenne Hub and the other at the Southern Star interconnect;
- 32 mainline valves (MLVs), consisting of 1 at the Cheyenne Hub, 4 at interconnects in Kiowa County, Kansas, and 27 located independently along the mainline and laterals; and
- Two pig [3] launchers, two pig receivers, and five pig launchers and receivers, each collocated with new MLV sites.

The final EIS has been placed in the public files of the FERC and is available for public inspection in the Public Reference Room 2A or call (202) 502–8371.

A limited number of copies of the final EIS are available from the Public Reference Room. In addition, copies of the final EIS have been mailed to Federal, state, and local agencies;

[1] A lateral is typically a smaller diameter pipeline that takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

[2] An interconnect is a connection to another pipeline system that is used to deliver or receive gas. Metering and regulating facilities would typically be included at each interconnect.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

elected officials; Native American tribes; newspapers; public libraries; television and radio stations; intervenors to the FERC's proceeding; and individuals who provided scoping comments, commented on the draft EIS, or requested the final EIS.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet website (*http://www.ferc.gov*). Using the "eLibrary", select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number", and follow the instructions. You may also search using the phrase "Cheyenne Plains" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Information concerning the involvement of the FS is available from John Oppenlander at (970) 346–5005. Information concerning the involvement of the FWS is available from Dan Mulhern at (785) 539–3474 (ext. 109).

Magalie R. Salas,

Secretary.

[FR Doc. E4–412 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 03–338]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants in part and denies in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC to be designated as an eligible telecommunications carrier throughout its licensed service area in the Commonwealth of Virginia, pursuant to the Communications Act of 1934, as amended. The Commission concludes that Virginia Cellular, LLC has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. The Commission also finds that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 96–45; FCC 03–338 released on January 22, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we grant in part and deny in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In so doing, we conclude that Virginia Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1). Specifically, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. We find that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest. We also find that the designation of Virginia Cellular as an ETC in areas served by five of the six rural telephone companies serves the public interest and furthers the goals of universal service. As explained, with regard to the study area of NTELOS Telephone Inc. (NTELOS), we do not find that ETC designation would be in the public interest.

2. Because Virginia Cellular is licensed to serve only part of the study area of three of six incumbent rural telephone companies affected by this designation, Virginia Cellular has requested that the Commission redefine the service area of each of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act. We agree to the service area redefinition proposed by Virginia Cellular for the service areas of Shenandoah Telephone Company (Shenandoah) and MGW Telephone Company (MGW), subject to the agreement of the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements. We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved. Because we do not designate Virginia Cellular as an ETC in NTELOS' study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) The Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs. Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas. The outcome of that proceeding could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive universal service support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission. We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide

the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

II. Discussion

5. After careful review of the record before us, we find that Virginia Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for portions of its licensed service area. First, we find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Virginia Cellular's petition under section 214(e)(6). Second, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC in accordance with section 214(e)(1). In addition, we find that the designation of Virginia Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by providing greater mobility and a choice of service providers to consumers in high-cost and rural areas of Virginia. Pursuant to our authority under section 214(e)(6), we therefore designate Virginia Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia, as set forth. As explained, however, we do not designate Virginia Cellular as an ETC in the study area of NTELOS. In areas where Virginia Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Virginia Cellular's ETC designation shall be subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Virginia Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding. We also note that Virginia Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.

A. Commission Authority To Perform the ETC Designation

6. We find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider Virginia Cellular's petition under section 214(e)(6) of the Act. Specifically, Virginia Cellular states that it submitted an application for designation as an ETC with the Virginia Commission, and on April 9, 2002, the Virginia Commission issued an order stating that it had not asserted jurisdiction over CMRS carriers. In its order, the Virginia Commission directed Virginia Cellular to file for ETC designation with the FCC. Based on this statement by the Virginia Commission, we find that the Virginia Commission lacks jurisdiction to designate Virginia Cellular as an ETC and that this Commission has authority to perform the requested ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).

B. Offering and Advertising the Supported Services

7. *Offering the Services Designated for Support.* We find that Virginia Cellular has demonstrated through the required certifications and related filings, that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service support mechanism. As noted in its petition, Virginia Cellular is an "A-Band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland, as well as the cities of Harrisonburg, Staunton, and Waynesboro. Virginia Cellular states that it currently provides all of the services and functionalities enumerated in § 54.101(a) of the Commission's rules throughout its cellular service area in Virginia. Virginia Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers. Virginia Cellular also complies with applicable law and Commission directives on providing access to emergency services. In addition, although the Commission has not set a minimum local usage requirement, Virginia Cellular certifies it will comply with "any and all minimum local usage requirements adopted by the FCC" and it intends to offer a number of local calling plans as part of its universal service offering. As discussed, Virginia Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under §§ 54.313 and 54.314 of the Commission's rules.

8. Virginia Cellular has also made specific commitments to provide service to requesting customers in the service areas that it is designated as an ETC. Virginia Cellular states that if a request is made by a potential customer within its existing network, Virginia Cellular will provide service immediately using its standard customer equipment. In instances where a request comes from a potential customer within Virginia Cellular's licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) The requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service. In addition, if after following these steps, Virginia Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.

9. Virginia Cellular has further committed to use universal service support to further improve its universal service offering by constructing several new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage. Virginia Cellular estimates that it will construct 11 cell sites over the first year and a half following ETC designation. These 11 cell sites will serve a population of 157,060. Virginia Cellular

notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.

10. The Virginia Rural Telephone Companies raise several concerns about Virginia Cellular's service offerings. We address each of these concerns, and in so doing, we conclude that Virginia Cellular has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. Initially, we note that the Commission has held that to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service. Instead, "a new entrant can make a reasonable demonstration * * * of its capability and commitment to provide universal service without the actual provision of the proposed service."

11. We also reject the argument of the Virginia Rural Telephone Companies that Virginia Cellular does not offer all of the services supported by the federal universal service support mechanisms as required by section 214(e)(1)(A). Specifically, the Virginia Rural Telephone Companies claim that Virginia Cellular: (1) Has not yet upgraded from analog to digital and until this happens, Virginia Cellular cannot effectively implement E–911 or the Communications Assistance for Law Enforcement Act (CALEA); (2) offers no local usage; (3) has stated that its customers will not have equal access to interexchange carriers; (4) states only that it will participate "as required" with respect to Lifeline service; and (5) has wireless signals that are sporadic or unavailable in some of the mountainous regions that Virginia Cellular proposes to serve.

12. We find that Virginia Cellular's commitment to provide access to emergency services is sufficient. Virginia Cellular states that it is in compliance with state and federal 911 and E–911 mandates and is upgrading from analog to digital technology. Virginia Cellular states that it is implementing Phase I E–911 services in those areas where local governments have developed E–911 functionality and that upon designation as an ETC, it will be able to effectively implement E–911.

13. We find sufficient Virginia Cellular's showing that it will offer minimum local usage as part of its universal service offering. Therefore, we reject the Virginia Rural Telephone Companies' claim that Virginia Cellular should be denied ETC designation because it does not currently offer any local usage. Although the Commission did not set a minimum local usage requirement, in the *Universal Service Order*, 62 FR 32862, June 17, 1997, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services. Virginia Cellular states that it will comply with any and all minimum local usage requirements adopted by the FCC. It adds that it will meet the local usage requirements by including a variety of local usage plans as part of a universal service offering. In addition, Virginia Cellular states that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes. Accordingly, we find that Virginia Cellular's commitment to provide local usage is sufficient.

14. We reject the Virginia Rural Telephone Companies' claim that ETC designation should be denied because Virginia Cellular's customers will not have equal access to interexchange carriers. Section 54.101(a)(7) of the rules states that one of the supported services is access to interexchange services, not equal access to those services. Virginia Cellular states that it provides access to interexchange services. Accordingly, we find sufficient Virginia Cellular's showing that it will offer access to interexchange services.

15. We find that Virginia Cellular's commitment to participate in the Lifeline and Linkup programs is sufficient. In its petition, Virginia Cellular states that it currently has no Lifeline customers, and upon designation as an ETC, it will participate in Lifeline as required. Virginia Cellular also states that it will advertise the availability of Lifeline service to its customers. Although Virginia Cellular does not currently advertise Lifeline to its customers, we note that the advertising rules for Lifeline and Linkup services apply only to already-designated ETCs. Thus, we find sufficient Virginia Cellular's commitment to participate in Lifeline and Linkup.

16. Although the Virginia Rural Telephone Companies claim that Virginia Cellular's wireless signals are sporadic in certain areas, we find that the existence of so-called "dead spots" in Virginia Cellular's network does not preclude us from designating Virginia Cellular as an ETC. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC. Moreover, as stated, Virginia Cellular has committed to improve its network. In addition, the Commission's rules acknowledge the existence of dead spots. "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service." Section 22.99 of the Commission's rules states that "[s]ervice within dead spots is presumed." Additionally, the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots * * * ." Because "dead spots" are acknowledged by the Commission's rules, we are not persuaded by the Virginia Rural LECs that the possibility of dead spots demonstrates that Virginia Cellular is not willing or capable of providing acceptable levels of service throughout its service area.

17. *Offering the Supported Services Using a Carrier's Own Facilities.* Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. Virginia Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers." We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

18. *Advertising the Supported Services.* We conclude that Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution. Virginia Cellular certifies that it "will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission." In addition, Virginia Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Virginia Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Virginia Cellular's service offerings and learn about Lifeline and Linkup discounts. Virginia Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service. We find that Virginia Cellular's certification and its additional

commitments to advertising its service offerings satisfy section 214(e)(1)(B). In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.

C. Public Interest Analysis

19. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies Bell Atlantic and GTE South, Inc. We also conclude that it is in the public interest to designate Virginia Cellular as an ETC in Virginia in the study areas served by five of the six affected rural telephone companies. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Virginia Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Virginia Cellular as an ETC, however, for the study area of NTELOS because we find that Virginia Cellular has not satisfied its burden of proof in this instance.

20. *Non-Rural Study Areas.* We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies of Bell Atlantic and GTE South. We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Virginia Cellular's public interest showing here is sufficient based on the detailed commitments Virginia Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas. We also note that no parties oppose Virginia Cellular's request for ETC designation in the study areas of these non-rural telephone companies. We therefore conclude that Virginia Cellular has demonstrated that its designation as an ETC in the study areas of these non-rural telephone companies, is consistent with the public interest, as required by section 214(e)(6). We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

21. *Rural Study Areas.* Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

22. Virginia Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Virginia Cellular has committed to serve residences to the extent that they do not have access to the public switched network through the incumbent telephone company. Also, the mobility of Virginia Cellular's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Virginia Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Virginia Cellular's customers will be subject to fewer toll charges.

23. We acknowledge arguments made in the record that wireless telecommunications offerings may be subject to dropped calls and poor coverage. Parties also have noted that wireless carriers often are not subject to mandatory service quality standards. Virginia Cellular has committed to mitigate these concerns. Virginia Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage. As evidence of its commitment to high service quality, Virginia Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service. In addition, Virginia Cellular has committed to provide the Commission with the number of consumer complaints per 1,000 handsets on an annual basis. Therefore, we find that Virginia Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

24. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs. Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs

is growing at a dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately $2 million or 0.4 percent of high-cost support. In the fourth quarter of 2003, 112 competitive ETCs are projected to receive approximately $32 million or 3.7 percent of high-cost support. This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, commenters argue that designation of competitive ETCs will place significant burdens on the federal universal service fund without any corresponding benefits. We recognize these commenters raise important issues regarding universal service support. As discussed, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

25. Additionally, we conclude that, for most of the rural areas in which Virginia Cellular seeks ETC designation, such designation does not raise the rural creamskimming and related concerns alleged by commenters. Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area. In this case, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, Virginia Cellular will be unable to provide facilities-based service to the entirety of the study areas of three of the six affected rural telephone companies—Shenandoah, MGW, and NTELOS. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner intends to creamskim in the rural study area. In this case, however, Virginia Cellular commits to provide universal service throughout its licensed service area. It therefore does not appear that Virginia Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

26. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier's license covers. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.

27. We have analyzed the record before us in this matter and find that, for the study areas of Shenandoah and MGW, Virginia Cellular's designation as an ETC is unlikely to undercut the incumbents' ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers reveals that, for the study areas of MGW and Shenandoah, Virginia Cellular will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other factors that define high-cost areas, a low population density typically indicates a high-cost area. Our analysis of population density reveals that Virginia Cellular is serving not only the lower cost, higher density wire centers in the study areas of MGW and Shenandoah. The population density for the Shenandoah wire center for which Virginia Cellular seeks ETC designation is approximately 4.64 persons per square mile and the average population density for Shenandoah's remaining wire centers is approximately 53.62 persons per square mile. The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile.

28. We conclude, however, for the following reasons, that it would not be in the public interest to designate Virginia Cellular as an ETC in the study area of NTELOS. Virginia Cellular's licensed CMRS area covers only the Waynesboro wire center in NTELOS' study area. Based on our examination of the population densities of the wire centers in NTELOS' study area, we find that Waynesboro is the lowest-cost, highest-density wire center in the study area of NTELOS, and that there is a great disparity in density between the Waynesboro wire center and the NTELOS wire centers outside Virginia Cellular's service area. The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS' study area is approximately 33 persons per square mile. Universal service support is calculated on a study-area-wide basis. Although NTELOS did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower-cost area, we find on the facts here that designating Virginia Cellular as an ETC only for the Waynesboro wire center could potentially significantly undermine NTELOS' ability to serve its entire study area. The widely disparate population densities in NTELOS' study area and the status of Waynesboro as NTELOS' sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage. In addition, we believe that, if NTELOS had disaggregated, the low costs of service in the Waynesboro wire center would have resulted in little or no universal service support targeted to those lines. Therefore, our decision not to designate Virginia Cellular as an ETC in the study area of NTELOS is unlikely to impact consumers in the Waynesboro wire center because Virginia Cellular will make a business decision on whether to provide service in that area without regard to the potential receipt of universal service support.

D. Designated Service Area

29. Virginia Cellular is designated an ETC in the areas served by the non-rural carriers Bell Atlantic and GTE South, as listed in Appendix A. We designate Virginia Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 6 Rural Service Area. Virginia Cellular is designated an ETC in the areas served by the three rural telephone companies whose study areas Virginia Cellular is able to serve completely, as listed in Appendix B. As discussed, and subject to the Virginia Commission's agreement on redefining the service areas of MGW and Shenandoah, we also designate Virginia Cellular as an ETC for the entire Bergton, McDowell, Williamsville, and Deerfield wire centers.

30. We designate Virginia Cellular as an ETC in the entire Deerfield, McDowell, and Williamsville wire centers in the study area of MGW. We note that, although the boundaries of its CMRS licensed service area in Virginia exclude a small part of MGW's Williamsville wire center, Virginia Cellular has committed nevertheless to offer service to customers in the entirety of the Williamsville wire center through a combination of its own facilities and

resale of either wireless or wireline services.

31. We also designate Virginia Cellular as an ETC for the Bergton wire center in Shenandoah's study area. We note that the study area of Shenandoah is composed of two non-contiguous areas. One such area is composed solely of the Bergton wire center, which falls within Virginia Cellular's licensed service area, and the other area is composed of eight remaining wire centers, which fall outside of Virginia Cellular's licensed service area. We find that, because the Bergton wire center is a low-density, high-cost wire center, concerns about undermining Shenandoah's ability to serve the entire study area are substantially minimized. We further note that the Commission has previously expressed concern about requiring competitive ETCs to serve non-contiguous areas. In the *Universal Service Order,* the Commission concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers. The Commission further concluded that "imposing additional burdens on wireless entrants would be particularly harmful in rural areas * * *." Accordingly, we find that denying Virginia Cellular ETC status for Shenandoah's Bergton wire center simply because Virginia Cellular is not licensed to serve the eight remaining wire centers would be inappropriate. Thus, we conclude that it is appropriate to designate Virginia Cellular as an ETC for the Bergton wire center within Shenandoah's study area.

32. Finally, for the reasons described, we do not designate Virginia Cellular as an ETC in any portion of NTELOS' service area.

E. Redefining Rural Telephone Company Service Areas

33. We redefine the service areas of MGW and Shenandoah pursuant to section 214(e)(5). Consistent with prior rural service area redefinitions, we redefine each wire center in the MGW and Shenandoah study areas as a separate service area. Our decision to redefine the service areas of these telephone companies is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

34. In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act. We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest. In defining the rural telephone companies' service areas to be different than their study areas, we are required to act in concert with the relevant state commission, "taking into account the recommendations" of the Joint Board. The Joint Board's concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision* are as follows: (1) Minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level. We find that the proposed redefinition properly addresses these concerns.

35. First, we conclude that redefining the affected rural telephone company service areas at the wire center level for MGW and Shenandoah should not result in opportunities for creamskimming. Because Virginia Cellular is limited to providing facilities-based service only where it is licensed by the Commission and because Virginia Cellular commits to providing universal service throughout its licensed territory in Virginia, concerns regarding creamskimming are minimized. In addition, we have analyzed the population densities of the wire centers Virginia Cellular can and cannot serve to determine whether the effects of creamskimming would occur. We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent's ability to serve its entire study area. Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service areas of MGW and Shenandoah as proposed.

36. Second, our decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas. Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives. Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve. Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

37. Third, we find that redefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

38. In accordance with § 54.207(d) of the Commission's rules, we submit this order to the Virginia Commission. We request that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the Commission's rules. Virginia Cellular's ETC designation in the service areas of Shenandoah and MGW is subject to the Virginia Commission's review and agreement with the redefinition proposal herein. We find that the Virginia Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service areas of Shenandoah and MGW, our designation of Virginia Cellular as an ETC for these areas as set forth herein shall also take effect. In all other areas for which this

Order grants ETC status to Virginia Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Virginia Cellular's petition with regard to redefining the affected rural service areas.

F. Regulatory Oversight

39. We note that Virginia Cellular is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under §§ 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement. Separate and in addition to its annual certification filing under §§ 54.313 and 54.314 of our rules, Virginia Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC. Virginia Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis. In addition, Virginia Cellular will annually submit information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year. We require that Virginia Cellular submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004. We find that reliance on Virginia Cellular's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel* v. *FCC*. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Virginia Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. We adopt the commitments that Virginia Cellular has made as conditions on our approval of its ETC designation for the Commonwealth of Virginia. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. Virginia Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Virginia Cellular fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders.

III. Anti-Drug Abuse Act Certification

40. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits. Virginia Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988. We find that Virginia Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in §§ 1.2001–1.2003 of the Commission's rules.

IV. Ordering Clauses

41. Pursuant to the authority contained in section 214(e)(6) of the Communications Act, Virginia Cellular, LLC is designated an eligible telecommunications carrier for specified portions of its licensed service area in the Commonwealth of Virginia subject to the conditions described herein.

42. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, § 54.207(d) and (e) of the Commission's rules, the request of Virginia Cellular, LLC to redefine the service areas of Shenandoah Telephone Company and MGW Telephone Company in Virginia is granted, subject to the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for these rural telephone companies. Upon the effective date of the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for those rural telephone companies, this designation of Virginia Cellular, LLC as an ETC for such areas as set forth herein shall also take effect.

43. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, and § 54.207(d) and (e) of the Commission's rules, the request of Virginia Cellular, LLC to redefine the service area of NTELOS Telephone Inc. in Virginia is denied.

44. A copy of this Memorandum Opinion and Order shall be transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Appendix A

Virginia Non-Rural Wire Centers for Inclusion in Virginia Cellular's ETC Service Area

Bell Atlantic (Verizon)	GTE South, Inc. (Verizon)
Staunton (STDRVASD)*.	Broadway.
Staunton (STTNVAST).	Edom.
Staunton (STTNVAVE).	Hinton.
Craigsville	Dayton.
Lovingston (NLFRVANF).	Keezletown.
Lovingston (LVTNVALN).	Harrisonburg.
Lovingston (WNTRVAWG).	McGaheysville.
Greenwood	Bridgewater.
Pine River	Weyerscave.
	Grottoes.
	Elkton.
	Amherst.
	Gladstone.

*Because the wire center locality names are the same in some instances, the Wire Center Codes are listed in parentheses.

Appendix B

Virginia Rural Telephone Company Study Areas for Inclusion in Virginia Cellular's ETC Service Area

New Hope Telephone Company
North River Telephone Company
Highland Telephone Cooperative

Appendix C

Virginia Rural Telephone Company Wire Centers for Inclusion in Virginia Cellular's Etc. Service Area

Shenandoah Telephone Company
Bergton
MGW Telephone Company
McDowell
Williamsville
Deerfield

[FR Doc. 04–4266 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 04–8]

Auction of Direct Broadcast Satellite Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission affirms that its authority to auction licenses for Direct Broadcast Satellite service channels at orbit locations to which the United States is assigned by the International Telecommunication Union has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. This action will enable the Commission to proceed expeditiously with the auction of these three DBS licenses.

DATES: Effective February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0786; Douglas Webbink, International Bureau, (202) 418–1494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Auction of Direct Broadcast Satellite Licenses Order ("*DBS Order*"), released on January 15, 2004. The complete text of the *DBS Order* as well as related Commission documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *DBS Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 04–8 for the *DBS Order*). The *DBS Order* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/52/*.

I. Introduction

1. In the *DBS Order*, the Commission affirms that its authority to auction licenses for Direct Broadcast Satellite ("DBS") service channels at orbit locations to which the United States is assigned by the International Telecommunication Union ("ITU") has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. The Commission does not address in the *DBS Order* the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead defers the resolution of this matter to a subsequent order.

II. Background

2. Eight orbit positions were assigned to the United States for DBS, under the auspices of the ITU, at the 1983 Regional Administrative Radio Conference for the Planning in Region 2 of the Broadcasting-Satellite Service in the Frequency Band 12.2–12.7 GHz and Associated Feeder Links in the Frequency Band 17.3–17.8 GHz. Under this Region 2 Band Plan for Ku-band DBS satellites ("ITU Region 2 Band Plan"), which was agreed upon by the nations present, the orbit slots assigned to the United States are for coverage of the United States.

3. The Commission first adopted competitive bidding rules for the DBS service in 1995. Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 60 FR 65587, December 20, 1995. In 2002, the Commission released Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order* ("*Part 100 R&O*"), 67 FR 51110, August 7, 2002, in which it streamlined the regulation of DBS and moved the DBS rules from part 100 to part 25.

4. On March 3, 2003, the Commission issued a public notice announcing an auction of DBS licenses (the *Auction No. 52 Comment Public Notice*, 68 FR 12906, March 18, 2003), in which it sought comment on its conclusion that the Commission has the authority to auction the DBS licenses included in Auction No. 52 and on a number of questions regarding whether eligibility restrictions are warranted for any of the licenses to be offered in Auction No. 52.

5. Pursuant to its delegated authority, the Wireless Telecommunications Bureau will resolve all the procedural issues relating to Auction No. 52 on which the Commission sought comment in the *Auction No. 52 Comment Public Notice* will adjust the license inventory of Auction No. 52 to reflect the Commission's resolution of the eligibility issue for three licenses in the *DBS Order*, and will announce a new start date for the auction.

III. Discussion

A. The Commission's Authority To Auction DBS Licenses

6. The Commission concludes that it has the authority to auction the DBS licenses included in Auction No. 52, as well as any other licenses for DBS channels at the eight orbit locations assigned to the United States under the current ITU Region 2 Band Plan that may become available in the future. The Commission concludes that section 647 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act"), 47 U.S.C. 765f, which prohibits the use of competitive bidding to assign orbit locations or spectrum used "for the provision of international or global satellite communications services," does not prohibit the use of auctions to assign licenses for DBS channels at the eight orbit locations assigned to the United States under the ITU Region 2 Band Plan. This is because the Commission finds that the DBS service authorized under such licenses is not an "international or global satellite communications service." Under the technical parameters of the ITU Region 2 Band Plan, these licenses are designed to provide service almost exclusively to the United States, and they must be used to provide a service delivered almost exclusively to U.S. consumers.

7. The Commission does not read the ORBIT Act auction prohibition to bar the use of the competitive bidding process for any service that provides incidental transborder service. Moreover, visibility of areas outside the United States from orbit locations assigned to the United States does not make service provided from these locations an international service. For coverage beyond that described in the ITU Region 2 Band Plan, a modification to the Plan, including further modifications of allocations currently in the Plan, would be required, and modifications of the ITU Region 2 Band Plan are not obtained as a matter of routine. The Commission also disagrees with the argument that the ORBIT Act prohibits auctions of DBS licenses because DBS service is provided on spectrum that is used for the provision of non-geostationary satellite orbit fixed-satellite service.

8. The Commission also concludes that, although it removed its own regulatory obstacles to the provision of DBS service outside the United States

from the U.S. orbit locations in Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order* ("*DISCO I*"), 11 FCC Rcd 2429 (1996), that decision had no effect on DBS operators' obligation to comply with the ITU Region 2 Band Plan. Therefore, the Commission finds that *DISCO I* should not be read to mean that the DBS licenses that it intends to assign by competitive bidding are to be used to provide an international satellite service, or to establish a basis for concluding that the auction prohibition of the ORBIT Act should apply to such U.S.-assigned DBS licenses. The Commission's conclusion that DBS service from the eight orbit locations assigned to the United States is predominantly domestic is consistent with actual service offerings and does not represent a departure from *DISCO I*.

B. Eligibility for the Three Available Western DBS Licenses

9. The Commission declines to adopt any eligibility restrictions for the three available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. In the part 100 proceeding, it considered a wide range of questions relating to whether ownership restrictions of any kind are appropriate for the DBS service, and it concluded that generally they were not.

10. No commenter proposed any eligibility restrictions for the available licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. This results in a record that lacks information regarding circumstances that would cause the Commission to impose eligibility restrictions in the DBS service with respect to these three licenses. Therefore, based on the record before it, the Commission concludes that there is no reason for it to deviate from any of its decisions in the *Part 100 R&O* as they apply to these licenses.

11. On the other hand, the Commission has received detailed comments presenting a number of arguments regarding the issue of whether it should adopt eligibility restrictions for the available license at 61.5° W.L. The Commission will address the matter of eligibility for the 61.5° W.L. license in a separate order, which it will issue as soon as it resolves the relevant issues that have been raised with respect to that license.

IV. Conclusion

12. For the reasons stated above, the Commission concludes that it has the authority to auction DBS licenses for the use of channels at the eight orbit locations to which the United States is assigned under the ITU Region 2 Band Plan, and that this authority has not been altered or diminished by the Commission's adoption of *DISCO I* or the enactment of section 647 of the ORBIT Act. The Commission also concludes that no eligibility restrictions on the available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations are warranted, and it will maintain its policy of open eligibility for these licenses. The Commission reaches no conclusions concerning whether it should impose any eligibility restrictions on the license for the two unassigned channels at the 61.5° W.L. orbit location and defers the resolution of that issue to a separate order.

V. Ordering Clause

13. Accordingly, it is ordered that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the *DBS Order* is hereby adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–4267 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Second Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the second meeting of the WRC–07 Advisory Committee will be held on June 8, 2004, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views introduced by the Advisory Committee's Informal Working Groups.

DATES: June 8, 2004; 10 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the second meeting is as follows:

Agenda

Second meeting of the WRC–07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554, June 8, 2004; 10 a.m.–12 noon.

1. Opening remarks.
2. Approval of agenda.
3. Approval of the minutes of the first meeting.
4. IWG reports and documents relating to preliminary views.
5. Future meetings.
6. Other business.

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 04–4264 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons of the first meeting the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 29, 2003. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, March 30, 2004 beginning at 10 a.m. and concluding at 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St, SW., Room TW–305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, the Designated Federal Officer (DFO) at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov*. The TTY number is: (202) 418–2989.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide recommendations to the FCC and to the communications industry that, if implemented, shall under all reasonably foreseeable circumstances assure optimal reliability and interoperability of wireless, wireline, satellite, cable, and public data networks.

At this first meeting under the Council's new charter, the Council will discuss the modifications that have been made to the Council's charter and how those modifications should be addressed, and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail (*Jeffery.Goldthorp@fcc.gov*) or U.S. mail (7–A325, 445 12th St, SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–4263 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) for review and approval the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Forms Relating to Outside Counsel, Expert and Legal Support Services Programs.

Form Numbers: 5000/24, 5000/25, 5000/26, 5000/27, 5000/28, 5000/29, 5000/31, 5000/32, 5000/33, 5000/34, 5000/35, 5000/36, 5200/01, 5210/01, 5210/02, 5210/03, 5210/03A, 5210/04, 5210/04A, 5210/06, 5210/06(A), 5210/08, 5210/09, 5210/10, 5210/10(A), 5210/11, 5210/12, 5210/12A, 5210/14, and 5210/15.

OMB Number: 3064–0122.

Annual Burden:

Estimated annual respondents: 4,603.

Estimated time per response: .50 hour to 1 hour.

Total annual burden hours: 3,711.

Expiration Date of OMB Clearance: June 30, 2005.

SUPPLEMENTARY INFORMATION: The collection ensures that outside counsel, legal services providers and experts that contract with the FDIC meet the eligibility requirements established by Congress and enables the FDIC to monitor contract compliance and expenditures.

DATES: Comments on this collection of information are welcome and should be submitted on or before March 29, 2004 to both the OMB reviewer and the FDIC contact listed below.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed below.

Leneta G. Gregorie, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Joseph F. Lackey, Jr., Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: February 20, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–4220 Filed 2–25–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, March 4, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Notice of proposed rulemaking on political committee status.

Routine administrative matters.

* * * * *

DATE AND TIME: Tuesday, March 9, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Acting Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–4353 Filed 2–24–04; 11:12 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) on behalf of the agencies a request for review of the information collection described below.

On December 5, 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the revision,

without extension, of the currently approved information collection: the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The comment period expired February 3, 2004.

DATES: Comments must be submitted on or before March 29, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.Written comments, which should refer to the "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–0032," should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*; by e–mail to regs.comments@federalreserve.gov; or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at www.regulations.gov. All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's web site (*www.ffiec.gov/forms002.htm*). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032

Frequency of Response: Quarterly

Affected Public: U.S. branches and agencies of foreign banks

Estimated Number of Respondents: 295

Estimated Total Annual Responses: 1,180

Estimated Time per Response: 22.75 burden hours

Estimated Total Annual Burden: 26,845 burden hours

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)).

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: In response to the December 5, 2003, notice (68 FR 68082), the agencies received one comment letter from a Federal Reserve district bank. The bank supported the proposed revisions and suggested some additional instructional clarifications with regard to repurchase agreements. These clarifications will be incorporated as appropriate.

The revisions to the FFIEC 002 have been approved by the FFIEC as originally proposed and are summarized below. The agencies will implement the changes as of the March 31, 2004, reporting date.

Schedule L–Derivatives and Off–Balance–Sheet Items

Modified Line Item 12, "Gross fair values of derivative contracts," to remove the following requirement: "The following items should be completed by those branches or agencies with total assets of $100 million or more." The exemption from reporting the fair values of derivative contracts for branches and agencies with less than dollar;100 million in assets originated when derivatives were considered off–balance sheet items and predates FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), which took effect in 2001. FAS 133 requires all derivatives to be measured at fair value and reported on the balance sheet as assets or liabilities. Because branches and agencies with less than $100 million in assets that have derivatives now have to regularly determine their fair value for reporting purposes, they have the information necessary to disclose the fair value of their derivatives in Schedule L. Accordingly, the agencies are eliminating this disclosure exemption. The fair value data on derivatives will complement the data that branches and agencies with less than $100 million in assets currently report on the notional amount of their derivative contracts.

Schedule M–Due from/Due to Related Institutions in the U.S. and in Foreign Countries (CONFIDENTIAL)

1. Modified Line Item 12, "Gross fair values of derivative contracts," to remove the following requirement: "The following items should be completed by those branches or agencies with total assets of dollar;100 million or more." The rationale for the proposed change is similar to the justification above for the comparable change to Schedule L.

2. Added Memoranda items 1.a, "Gross positive fair value," and 1.b, "Gross negative fair value" to Memorandum item 1, "Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor." The new items will provide a better measure of credit and market risk for credit derivatives entered into with related depository institutions, particularly for branches and agencies with large positions in such credit derivatives.

3. Added Memoranda items 2.a, "Gross positive fair value," and 2.b, "Gross negative fair value" to Memorandum item 2, "Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary." The rationale for the proposed change is the same as the justification above for adding items to Memorandum item 1.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, February 20, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–4293 Filed 2–25–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. GB&T Bancshares, Inc, Gainesville, Georgia; to merge with Southern Heritage Bancorp, Inc., Oakwood, Georgia, and thereby indirectly acquire Southern Heritage Bank, Oakwood, Georgia.

Board of Governors of the Federal Reserve System, February 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–4227 Filed 2–25–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: YMC Tracking Study (OMB No. 0920–0582)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: "The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages." CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a media campaign (Youth Media Campaign or YMC) designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime. The campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the campaign's effectiveness and revising Campaign messages and strategies as needed.

In accordance with the original OMB approval (OMB No. 0920–0582, March 10, 2003), this request will continue to expand and enhance the ongoing monitoring of the campaign's penetration with the target audience. For the campaign to be successful, campaign planners must have mechanisms to determine the target audiences and the reaction to the campaign brand and messages as the campaign evolves. Campaign planners also need to identify which messages are likely to have the greatest impact on attitudes and desired behaviors. This approval contains 2 surveys: (1) VERB Continuous Tracking Study; and (2) Media Benchmarking Study.

The VERB Continuous Tracking Study has facilitated campaign planners' ability to continually assess and improve the effectiveness of the targeted communication and other marketing variables throughout the evolution of the campaign. It enables staff to determine which media channels are most-effective to optimize communication variables such as weight levels, frequency and reach components, and programming formats that will have the greatest effect upon communicating the desired message to the target audiences. Implementation of the survey has provided for efficient collection of campaign awareness and understanding levels on a continual basis.

The campaign uses a tracking methodology with specific time points, using age-targeted samples. Tracking methods may include, but are not limited to telephone surveys, telephone or in-person focus groups, web-based surveys, or intercept interviews with tweens (9–13 year olds), parents, other

teen and adult influencers nationally and in specified cities. Marketing efforts have been implemented in selected cities, and the campaign planners will continue to evaluate which strategies are most effective in local markets.

The Media Benchmark Survey is used to assess target audience awareness and understanding of the campaign. The data collection is a random digit dial (RDD) telephone survey of tweens. Continuous tracking of awareness of the brand and the advertising messages are standard tools in advertising and marketing. The commitment of resources to the campaign's marketing efforts mandates that campaign planners be able to respond quickly to changes needed in message execution or delivery as is standard practice in the advertising industry. The annualized burden for this data collection is 2,301 hours.

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Media Benchmark Survey:			
Screener	3,585	1	1/60
Parent	325	1	2/60
Child	325	1	12/60
Continuous Tracking Survey:			
Screener	29,076	1	1/60
Parent	7,200	1	2/60
Child	7,200	1	12/60

Dated: February 13, 2004.

Alvin Hall, M.S.,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4219 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–27]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Weekly Morbidity and Mortality Reports and Annual Morbidity Series, OMB No. 0920–0007—Extension—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

Background

In 1878, Congress authorized the U.S. Marine Hospital Service (later renamed the U.S. Public Health Service (PHS) to collect morbidity reports on cholera, smallpox, plague, and yellow fever from U.S. consuls overseas; this information was to be used for instituting quarantine measures to prevent the introduction and spread of these diseases into the United States. In 1879, a specific Congressional appropriation was made for the collection and publication of reports of these notifiable diseases. Congress expanded the authority for weekly reporting and publication in 1893 to include data from state and municipal authorities throughout the United States. To increase the uniformity of the data, Congress enacted a law in 1902 directing the Surgeon General of the Public Health Service (PHS) to provide forms for the collection and compilation of data and for the publication of reports at the national level.

Reports on notifiable diseases were received from very few states and cities prior to 1900, but gradually more states submitted monthly and annual summaries. In 1912, state and territorial health authorities—in conjunction with PHS—recommended immediate telegraphic reports of five diseases and monthly reporting by letter of 10 additional diseases, but it was not until after 1925 that all states reported regularly. In 1942, the collection, compilation, and publication of morbidity statistics, under the direction of the Division of Sanitary Reports and Statistics, PHS, was transferred to the Division of Public Health Methods, PHS.

A PHS study in 1948 led to a revision of the morbidity reporting procedures, and in 1949 morbidity reporting activities were transferred to the National Office of Vital Statistics. Another committee in PHS presented a revised plan to the Association of State and Territorial Health Officers (ASTHO) at its meeting in Washington, DC, October 1950. ASTHO authorized a Conference of State and Territorial Epidemiologists (CSTE) for the purpose of determining the diseases that should be reported by the states to PHS. Beginning in 1951, national meetings of CSTE were held every two years until 1974, then annually thereafter.

In 1961, responsibility for the collection of data on nationally notifiable diseases and deaths in 122 U.S. cities was transferred from the National Office of Vital Statistics to CDC. For 37 years the Morbidity and Mortality Weekly Report (MMWR) has consistently served as CDC premier communication channel for disease outbreaks and trends in health and health behavior. In collaboration with the Council of State and Territorial Epidemiologists (CSTE), CDC has demonstrated the efficiency and effectiveness of computer transmission of data. The data collected electronically for publication in the MMWR provides information which CDC and State epidemiologists use to detail and more effectively interrupt outbreaks. Reporting also provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic measure. Users of data include, but are not limited to, congressional offices, state and local health agencies, health care providers, and other health related groups. The dissemination of public health information is accomplished through the MMWR series of publications. The publications consist of the MMWR, the CDC Surveillance Summaries, the Recommendations and Reports, and the Annual Summary of

Notifiable Diseases. The estimated annualized burden is 4927 hours.

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden (in hours)
Weekly Morbidity Report Respondent Burden				
States	50	52	1	2600
Territories	5	52	1@1 4@ 30/60	156
Cities	2	52	1	104
Subtotals	57			2860
CDC 43.5 Weekly Mortality Report Respondent Burden				
City health officers or Vital statistics registrars	122	52	12/60	1269
Annual Summary Respondent Burden				
States	50	1	14	700
Territories	5	1	14	70
Cities	2	1	14	28
Subtotals				798
Totals	179			4927

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4230 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–29–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Building Capacity to Fluoridate: Key Informant Interviews to Understand Community Water Fluoridation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since the first fluoridation of a public water system in Grand Rapids, Michigan in 1945, fluoridation of community water supplies has dramatically reduced the prevalence of dental caries in the United States. Scientific evidence compiled over nearly six decades demonstrates that adjusting the fluoride concentration of public water systems is a safe, cost-effective, and equitable intervention that benefits everyone in a given community regardless of financial status.

The percentage of the U.S. population living in areas with fluoridated water grew steadily from 1945 to the mid-1970s. Adoption of fluoridation is ultimately a choice made by community decision makers and often is put before the public for vote as a referendum. In spite of survey findings that roughly 70 percent of the U.S. population favors fluoridation, referenda since the 1980's have often resulted in community decisions not to fluoridate. Thus, the rate of increase in access to fluoridated water among those on public water systems has slowed. In 2000, 65.8 percent of this population had access to fluoridated water, still far short of the 75 percent fluoridation target set in both the *Healthy People 2000* and *2010* objectives.

The purpose of this research is to identify and describe the variables that influence community fluoridation decisions made by public vote and provide enhanced knowledge that may be useful to communities considering fluoridation.

In-person interviews will be conducted with 7 to 13 key participants in fluoridation referendum campaigns at 8 sites where fluoridation has been rejected or accepted within the last three years. Key participants in the campaigns will vary slightly by site. A total of 80 interviews will be conducted. The expected participants will include:

- State or local health department staff
- Campaign directors
- Local elected officials
- Outside political consultants
- Grassroots leaders
- Media representatives

The estimated annualized burden is 140 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Respondent Screening	43	1	10/60
Political Professionals	16	1	100/60
Civic and Grassroots Leaders	16	1	100/60

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Media Representatives	16	1	100/60
Health care providers	16	1	100/60
Local Officials	16	1	100/60

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4231 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: REACH 2010 Evaluation, OMB No. 0920–0502—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The REACH 2010 Demonstration Program is a part of the Department of Health and Human Services' response to the President's Race Initiative and to the Healthy People 2010 goal to eliminate disparities in the health status of racial and ethnic minorities. The purpose of REACH 2010 is to demonstrate that adequately funded community-based programs which are designed and led by the communities they serve can reduce health disparities in infant mortality, deficits in breast and cervical cancer screening and management, cardiovascular diseases, diabetes, HIV/AIDS, and deficits in childhood and adult immunizations. The communities served by REACH 2010 include: African American, American Indian, Hispanic American, Asian American, and Pacific Islander. Seventeen communities were funded in Phase I to construct Community Action Plans (CAP). In Phase II, 26 communities will receive funding to implement their CAP. This data collection is for the Phase II communities.

As part of the President's Race Initiative, it is imperative that REACH 2010 demonstrate success in reducing health disparities among racial and ethnic minority populations. Toward that end, it is of critical importance that CDC collects uniform survey data from each of the 26 communities funded for the Phase II REACH 2010 Demonstration Program. The same survey will be conducted in each community; it will contain questions that are standard public health performance measures for each health priority area. Surveys will be administered by either telephone or household interview. These surveys will be administered annually using a different sample from each community. The total annualized burden for this data collection is 8,138 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Introductory Call	29,647	1	2/60
Questionnaire	26,000	1	15/60
Respondent Reliability Assessment	2,600	1	15/60

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4232 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–03–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: EEOICPA Special Exposure Cohort Petition Forms (42 CFR part 83)—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001] was enacted. It established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to

covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Accordingly, the President issued Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers") on December 7, 2000 (65 FR 77487), assigning primary responsibility for administration of the compensation program to the Department of Labor (DOL). The executive order directed the Department of Health and Human Services (HHS) to perform several technical and policymaking roles in support of the DOL program.

Among other duties, the executive order directed HHS to establish and implement procedures for considering petitions by classes of nuclear weapons workers to be added to the "Special Exposure Cohort" (the "Cohort"), various groups of workers selected by Congress whose claims for cancer under EEOICPA can be adjudicated without demonstrating that their cancer was "at least as likely as not" caused by radiation doses they incurred in the performance of duty. In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the "Board") in establishing such findings. On March 7, 2003, HHS proposed procedures for adding such classes to the Cohort in a notice of proposed rulemaking at 42 CFR part 83.

The proposed HHS procedures would authorize a variety of individuals and entities to submit petitions, as specified under § 83.7. Petitioners would be required to provide the information specified in § 83.9 to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two petition forms to assist the petitioners in providing this required information efficiently and completely. Petition Form A is a one-page form to be used by EEOICPA cancer claimants for whom NIOSH will have attempted to conduct dose reconstructions and will have determined that available information is not sufficient to complete the dose reconstruction on the majority of petitioners. The form addresses the informational requirements specified under § 83.9(a) and (b). NIOSH expects these claimant-petitions will comprise the majority of petitions. Petition Form B, accompanied by separate instructions, is intended for all other petitioners. The form addresses the informational requirements specified under § 83.9(a) and (c). Forms A and B can be submitted electronically as well as in hard copy. Petitioners should be aware that HHS is not *requiring* petitioners to use the forms. Petitioners can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements referenced above. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually make use of the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes; to: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class. Finally, under § 83.16, petitioners may contest the proposed decision of the Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the time to prepare and submit such a challenge is 45 minutes. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission should be in a letter format. The total annual burden for this data collection is 54 hours.

CFR reference	Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
83.9	Form A	80	1	3/60
83.9	Form B	10	1	5
83.9	Authorization	4	1	3/60

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4233 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–31–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Survey of Chronic Fatigue Syndrome and Chronic Unwellness in Georgia—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Congress commissioned CDC to develop research that estimates the magnitude of chronic fatigue syndrome (CFS) in the United States with special consideration of under-served populations (children and racial/ethnic minorities); describe the clinical features of CFS; and identify risk factors and diagnostic markers. CDC is currently planning a study in Georgia to estimate the prevalence of CFS and other fatigue illnesses and to determine whether or not there are differences in occurrence of fatigue illness across metropolitan, urban, rural populations and in racial and ethnic populations.

In 2001, OMB approved the information collection, National Telephone Survey of Chronic Fatigue Syndrome, under OMB Number 0920–0498. In July 2001, CDC conducted a pilot survey to determine feasibility of a national study and to test procedures for this national survey of CFS. The pilot study showed that clinical evaluation to confirm classification of CFS was not practical on a national level, and the planned follow-on national survey was not conducted.

CDC has since modified the concept of the National Survey of CFS by limiting data collection to one southern U.S. state (Georgia). This modified research is better able to serve the objectives of the National Survey of CFS and additional CDC objectives. Reasons supporting this statement are listed below.

- Logistics. A difficulty in the Pilot Test was matching subjects and physicians for clinical evaluations because subjects were scattered across the continent. Focusing on a single state allows operation of regional clinics and greater opportunities for collaboration between and among CDC, Emory University, and consultants.
- Metropolitan, urban, and rural differences. Pilot Test results suggest no regional differences in the occurrence of CFS-like illnesses between and among the Midwest, south, west, and northeast, so concentrating on one state (Georgia) should provide more generalized information. Pilot Test findings suggested that further exploration of urban and rural differences might prove useful. Again, Georgia well-serves such a study with a major metropolitan center (Atlanta), urban areas (Macon and Warner Robins), and rural populations (in counties surrounding Macon) with well-defined regional differences.
- Racial/ethnic differences. The prevalence of CFS in other than the white population has not been definitively measured, although some studies indicate CFS prevalence in minority populations may be higher than generally thought. Georgia has well-characterized urban and rural as well as white, black, and Hispanic populations of varying socioeconomic status living in the regions to be studied. The presence of these populations is ideal for public health surveys. Taken together, the proposed Georgia survey will produce estimates of the prevalence of CFS in metropolitan, urban, and rural populations and will elucidate racial/ethnic differences in CFS in these populations.

The proposed study replicates the Sedgwick County Study and the National Pilot Test using similar methodology and data collection instruments. The study begins with a random-digit-dialing telephone survey to identify fatigued, unwell, and well individuals, followed by detailed telephone interviews to obtain additional data on participant health status. As a result of the telephone interviews, eligible subjects will be asked to participate in clinical evaluations. CDC will estimate the prevalence of CFS and other fatigue illnesses in metropolitan, urban, and rural Georgia and in racial and ethnic populations. CDC will compare prevalence estimates from this proposed study of the Georgia population to estimates obtained for Sedgwick County to ascertain whether or not Sedgwick County findings can be generalized to other populations. The estimated annualized burden is 6,257 hours.

Respondents	Number of respondents	Number responses per respondent	Avg. burden per response (in hours)
Screener interview	19,344	1	7/60
Telephone interview	8,000	1	30/60

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4234 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–30–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: National Nursing Home Survey, OMB No. 0920–0353—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Section 306 of the Public Health Service Act states that the National Center for Health Statistics "shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions." The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, 1997, and 1999. NNHS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NNHS provides data on the characteristics of nursing homes (*e.g.* Medicare and Medicaid certification, ownership, membership in chains/HMO/hospital systems), residents (*e.g.* demographics, functional status, services received, diagnoses, sources of payment), and staff (*e.g.* staffing mix, turnover, benefits, training, education).

The survey provides detailed information on utilization and staffing patterns, and quality of care variables that is needed in order to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly. The availability and use of long-term care services are becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Equally as important is ensuring the adequacy and availability of the long-term care workforce. Data from the NNHS have been used by Federal agencies, professional organizations, private industry, and the media.

NCHS plans to conduct the next NNHS in March–June 2004 with a repeat of the survey in 2006. This national survey follows a pretest of forms and procedures conducted in June–July 2003. The data collection forms and procedures have been extensively revised from the previous NNHS. The 2004 NNHS will be based on computer-assisted personal interview (CAPI) and computer-assisted telephone interview (CATI) methodologies. The annualized burden hours are estimated to be 13,375.

Respondents	Number of respondents	Number of responses per respondent	Average burden per responses (in hrs.)
Facility Questionnaire	1,500	1	20/60
Nursing Home Staff Questionnaire	1,500	1	50/60
Current Resident Sampling List	1,500	1	20/60
Current Resident Questionnaire	1,500	6	25/60
Discharged Resident Sampling List	1,500	1	15/60
Discharged Resident Questionnaire	1,500	6	25/60
Sampling List of Nursing Assistants	750	1	20/60
Nursing Assistants Questionnaire	750	6	40/60

Dated: February 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4235 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Advisory Board on Radiation and Worker 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 p.m.—3 p.m., March 11, 2004.

Place: Teleconference call will originate at the CDC, NIOSH, Atlanta, Georgia. Please *see* **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

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 NIOSH for qualified cancer claimants, and advice on petitions to add 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 issued on August 3, 2001, and renewed on August 3, 2003.

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 whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The meeting will focus on review of draft site profile review procedures that are developed by the contractor.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m. Eastern Time. To access the teleconference you must dial 1–888–795–2173. To be automatically connected to the call, you will need to provide the pass code 46204 to be connected to the call.

FOR FURTHER INFORMATION CONTACT: 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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 19, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4238 Filed 2–25–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–214]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Independent Diagnostic Testing Facility and Supporting Regulations contained in 42 CFR 410.33; *Form No.:* CMS–R–214 (OMB# 0938–0721); *Use:* The information collection requirements associated with an Independent Diagnostic Testing Facilities involve documentation of proficiency of medical personnel and of resources; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Federal government and State, local and tribal government; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 42.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 19, 2004.

John P. Burke III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–4215 Filed 2–25–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–234]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts and Supporting Regulations in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, and 424.24; *Form No.:* CMS–R–234 (OMB# 0938–0730); *Use:* Section 4507 of the BBA of 1997 amended section 1802 of the Social Security Act to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the supporting regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 4507 of BBA 1997, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits; *Frequency:* Biennially; *Affected Public:* Business or other for-profit; *Number of Respondents:* 26,820; *Total Annual Responses:* 26,820; *Total Annual Hours:* 7,197. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503; Fax (202) 395–6929.

Dated: February 19, 2004.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–4216 Filed 2–25–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Color Additive Certification Requests and Recordkeeping

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations governing batch certification of color additives manufactured for use in foods, drugs, cosmetics, or medical devices in the United States.

DATES: Submit written or electronic comments on the collection of information by April 26, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (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. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Color Additive Certification Requests and Recordkeeping—21 CFR Part 80 (OMB Control Number 0910–0216)—Extension

FDA has regulatory oversight for color additives used in foods, drugs, cosmetics, and medical devices. Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless it meets the requirements of a listing regulation, including any requirement for batch certification, and is used in accordance with the regulation. FDA lists color additives that have been shown to be safe for their intended uses in title 21 of the Code of Federal Regulations (CFR). FDA requires batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempted from certification.

The requirements for color additive certification are described in part 80 (21 CFR part 80). In the certification procedure, a representative sample of a new batch of color additive, accompanied by a "request for certification" that provides information about the batch, must be submitted to FDA's Office of Cosmetics and Colors. FDA personnel perform chemical and other analyses of the representative sample and, providing the sample

satisfies all certification requirements, issue a certification lot number for the batch. FDA charges a fee for certification based on the batch weight and requires manufacturers to keep records of the batch pending and after certification.

Under § 80.21, a request for certification must include: Name of color additive, manufacturer's batch number and weight in pounds, name and address of manufacturer, storage conditions, statement of use(s), certification fee, and signature of person requesting certification. Under § 80.22, a request for certification must include a sample of the batch of color additive that is the subject of the request. The sample must be labeled to show: Name of color additive, manufacturer's batch number and quantity, and name and address of person requesting certification. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The purpose for collecting this information is to help FDA assure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The required information is unique to the batch of color additive that is the subject of a request for certification. The manufacturer's batch number is used for temporarily identifying a batch of color additive until FDA issues a certification lot number and for identifying a certified batch during inspections. The manufacturer's batch number also aids in tracing the disposal of a certified batch or a batch that has been refused certification for noncompliance with the color additive regulations. The manufacturer's batch weight is used for assessing the certification fee. The batch weight also is used to account for the disposal of a batch of certified or certification-rejected color additive. The batch weight can be used in a recall to determine whether all unused color additive in the batch has been recalled. The manufacturer's name and address and the name and address of the person requesting certification are used to contact the person responsible should a question arise concerning compliance with the color additive regulations. Information on storage conditions pending certification is used to evaluate whether a batch of certified color additive is inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis unrepresentative of the batch. FDA checks storage information during inspections. Information on intended uses for a batch of color additive is used to assure that a batch of certified color additive will be used in accordance with the requirements of its listing regulation. The statement of the fee on a certification request is used for accounting purposes so that a person requesting certification can be notified promptly of any discrepancies.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
80.21	23	200	4,603	0.20	921
80.22	23	200	4,603	0.05	230
Total				0.25	1,151

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
80.39	23	200	4,603	0.25	1,151
Total					1,151

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual burden estimate for this information collection is 2,302 hours. The estimated reporting burden for this information collection is 1,151 hours and the estimated recordkeeping burden for this information collection is 1,151 hours. From fiscal year (FY) 2001 to FY 2003, FDA processed an average of 4,603 responses (requests for certification of batches of color additives) per year. There were 23 different respondents, corresponding to an average of approximately 200 responses from each respondent per year. Using information from industry personnel, FDA estimates that an average of 0.25 hour per response is required for reporting (preparing certification requests and accompanying sample labels) and an average of 0.25 hour per response is required for recordkeeping.

Dated: February 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4247 Filed 2–25–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Continuous Marketing Applications: Pilot 2–Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by March 29, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Continuous Marketing Applications: Pilot 2–Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act (OMB Control Number 0910–0518—Extension)

FDA is requesting OMB approval under the PRA (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the guidance for industry entitled "Continuous Marketing Applications: Pilot 2–Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the Pilot 2 program.

In conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement. Under the CMA pilot program, Pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in the program. Pilot 2 is an exploratory program that will allow FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of one Fast Track product per review division in CDER and CBER will be selected to participate. This guidance provides information regarding the selection of participant applications for Pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of Pilot 2. FDA began accepting applications for participation in Pilot 2 on October 1, 2003.

The guidance describes one collection of information: Applicants who would like to participate in Pilot 2 must submit an application (Pilot 2 application) containing certain information outlined in the guidance. The purpose of the Pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between FDA and the applicant during the product development process.

FDA's regulation at § 312.23 (21 CFR 312.23) states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. Both 21 CFR part 312 and FDA Form 1571 have a valid OMB control number (OMB control number 0910–0014), which expires January 31, 2006.

In the guidance document, FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) ask that a Pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, Pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a Pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each Pilot 2 application is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the Pilot 2 application is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the guidance, the agency asks applicants to include the following information in the Pilot 2 application:

- Cover letter prominently labeled "Pilot 2 application;"
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of new drug application (NDA)/ biologic licensing application (BLA) submissions;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., chemistry/ manufacturing/ controls, pharmacology/ toxicology, clinical, clinical pharmacology and biopharmaceutics);
- Rationale for interest in participating in Pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information will be used by the agency to determine which Fast Track products are eligible for participation in Pilot 2. Participation in this pilot program will be voluntary.

Based on the number of approvals for Fast Track designations and data collected from the review divisions and offices within CDER and CBER, FDA estimates that in fiscal year 2002, 109 drug product applications and 46 biological products had Fast Track designation. FDA anticipates that approximately 85 drug product applicants (respondents) and approximately 29 biological product applicants (respondents) will submit at least one Pilot 2 application. Based on information collected from offices within CDER and CBER, the agency further anticipates that the total responses, i.e., the total number of applications received for Pilot 2, will be 90 for drug products and 35 for biological products. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitting in a Pilot 2 application in accordance with the guidance, is estimated to be approximately 80 hours.

Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a Pilot 2 application. Therefore, the agency estimates that applicants will use approximately 10,000 hours to complete the Pilot 2 applications.

On September 29, 2003, this guidance was approved on an emergency basis, which expires on March 30, 2004. This notice of request is to receive approval in the normal PRA process.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 Application	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
CDER	85	1.06	90	80	7,200
CBER	29	1.20	35	80	2,800
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of November 20, 2003, (68 FR 65457), FDA announced the availability of the guidance and requested comments for 60 days on the information collection. One comment was received that did not pertain to the information collection.

Dated: February 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4248 Filed 2–25–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0077]

Agency Emergency Processing Under Office of Management and Budget Review; Animal Drug User Fee Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information, Animal Drug User Fee Cover Sheet (cover sheet), will be used to assure that each animal drug user fee payment and each animal drug application for which payment is made is appropriately linked to the payment that is made. FDA is requesting this emergency processing under the PRA to implement new statutory requirements of the Animal Drug User Fee Act (ADUFA) (section 740(a)(1) of the Federal Food Drug and Cosmetic Act (the act). ADUFA requires FDA to collect fees from each person who submits certain new animal drug applications or supplements on or after September 1, 2003, and FDA may not accept applications for review if all fees have not been paid (section 740(e) of the act).

DATES: Fax written comments on the collection of information provisions by March 10, 2004. FDA is requesting approval of this emergency processing by March 15, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974, or electronically mail comments to: *Fumie_Yokota@omb.eop.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately so that the agency can use the cover sheet to collect information from entities submitting animal drug applications. That information is needed to assure that the application fee payments are correctly associated with the payer of the fee and with the application for which payment is made.

ADUFA was signed into law on November 18, 2003 (Public Law 108–130) and the appropriation act enabling FDA to collect the newly authorized fees was signed into law on January 23, 2004 (Public Law 108–199). ADUFA requires FDA to collect animal drug application fees from each person who submits certain animal drug applications or supplements on or after September 1, 2003 (section 740(a)(1)(A) of the act). The use of normal clearance procedures would result in the prevention or disruption of this collection of information and the delay of fees that must be collected immediately to fund animal drug review activities in the current fiscal year. Therefore, FDA has requested approval of this emergency processing for this proposed collection of information by March 15, 2004.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fee Cover Sheet; FDA Form 3546

Under section 740 of the act, as amended by ADUFA (21 U.S.C. 379j-12), FDA has the authority to assess and collect for certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Under the new statutory provisions (section 740(e) of the act, as amended by ADUFA), animal drug applications and supplemental animal drug applications for which the required fee has not been paid are considered incomplete and are not to be accepted for review by the agency. The types of

fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The cover sheet (Form FDA 3546) is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made is appropriately linked to the payment that is made. The form, when completed electronically, will result in the generation of a unique payment identification number used in tracking the payment. FDA will use he information collected to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received. Inability to collect this information would delay the review process, and would also delay receipt of revenue that is to be used to fund the review of animal drug applications during the current fiscal year. FDA is requesting this emergency processing under the PRA to implement these new statutory requirements of ADUFA (section 740(a)(1) and (e) of the act). FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the act as amended by ADUFA	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(a)(1) FDA Form 3546 (cover sheet)	69	1 time for each application	69	1	69

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are new animal drug applicants or manufacturers. Based on FDA's data base system, there are an estimated 140 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 2003. The Center for Veterinary Medicine (CVM) estimates 69 annual responses that include the following: 28 new animal drug premarket approval applications and 41 supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 30 minutes to 1 hour. The hours per response are based on the average of these estimates.

Dated: February 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4309 Filed 2–23–04; 4:07 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Collection Tool for the Black Lung Clinics Program: In Use Without Approval

The Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), conducts an annual data collection of user information for the Black Lung Clinics Program. The purpose of the Black Lung Clinics Program is to improve the health status of coal workers by providing services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the quality of life of the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases. The purpose of collecting this data is to provide HRSA with information on how well each grantee is meeting the needs of active and retired miners in the funded communities.

Data from the annual report will provide quantitative information about the programs, specifically: (a) The characteristics of the patients they serve (gender, age, disability level, occupation type), (b) the characteristics of services provided (medical, non-medical, or counseling), and (c) number of patients served and visits conducted (encounters). This assessment will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It will also ensure that the organizations funded have demonstrated a need for services in their communities and that funds are being effectively used to provide services to meet those needs.

The estimated burden is a follows:

Form name	Number of respondents	Hours per response	Total burden hours
Database	15	10	150

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 19, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–4205 Filed 2–25–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Clinicians To Become Commissioned Officers; Recruitment of Sites for Assignment of Commissioned Officers

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted from clinicians seeking to be hired as commissioned officers in the U.S. Public Health Service and from sites seeking the assistance of these commissioned officers. These commissioned officers will be primary care clinicians who are physicians, dentists, family nurse practitioners, physician assistants, clinical psychologists, and clinical social workers. In support of other Presidential and Department of Health and Human Services Initiatives, a limited number of registered nurses (baccalaureate level) will be considered for placement in ambulatory community-based systems of care. These officers will be assigned by the National Health Service Corps (NHSC) to the neediest Health Professional Shortage Areas throughout the Nation. The NHSC will pay the salaries, moving expenses and benefits for these commissioned officers.

These officers will be part of a mobile cadre of health care professionals who, in addition to the services they will provide to patients at their assigned sites, may be called upon to respond to regional and/or national emergencies. The NHSC will assist the officers in acquiring, maintaining and enhancing emergency response skills. Their initial assignments will be up to three years in duration, after which, should these clinicians choose to stay in the U.S. Public Health Service, they will progress to new assignments.

Eligible Applicants

Clinicians—Applicants must file a U.S. Public Health Service Commissioned Corps application and meet the requirements for such commissioning. For example, all clinicians must be U.S. citizens under 44 years of age (age may be offset by prior active duty Uniformed Service time and/or civil service work experience in a Public Health Service (PHS) agency at a PHS site at a level commensurate with the duties of a commissioned officer), and have served less than 8 years of active duty if the clinician is/was a member of another Uniformed Service. Also, applicants must meet medical requirements, and pass an initial suitability investigation.

In addition, prior to the start of their assignment at an NHSC site, clinicians must meet the following requirements:

(1) Physicians must have completed a residency in Family Practice, Internal Medicine, combined Internal Medicine and Pediatrics, General Psychiatry or Obstetrics and Gynecology and be a diplomate of their respective Allopathic or Osteopathic Specialty Boards;

(2) Dentists must have passed a state or regional dental board exam;

(3) Family Nurse Practitioners must have national certification by the American Nurses Credentialing Center or the American Academy of Nurse Practitioners;

(4) Physician Assistants must have national certification by the National Commission on Certification of Physician Assistants;

(5) Clinical Psychologists must have a doctoral degree in clinical psychology, have a minimum of 1 year of postgraduate supervised clinical experience, have passed the Examination for Professional Practice in Psychology, and be able to practice independently and unsupervised as a clinical psychologist;

(6) Clinical Social Workers must have a masters degree in social work, have passed the Association of Social Work Board's (ASWB) Clinical or Advanced licensing exam prior to July 1, 1998 or the ASWB Clinical exam on or after July 1, 1998, and be able to practice independently and unsupervised as a clinical social worker; and

(7) All clinicians must possess a current, unrestricted, and valid license to practice their health profession in at least one of the 50 States, Washington, D.C., the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or Guam.

Sites—Applicants must be located in a Health Professional Shortage Area (HPSA) and submit a Proposal for Use of a Commissioned Officer 2004. Applicants must also submit a Recruitment and Retention Assistance Application, if not yet approved as an NHSC site. Sites applying for a physician, family nurse practitioner, physician assistant or registered nurse must be located in a primary medical care HPSA; sites applying for a dentist must be located in a dental HPSA; and sites applying for a psychiatrist, a clinical psychologist, or a clinical social worker must be located in a mental health HPSA. All sites to which NHSC clinicians are assigned must accept assignment under Medicare, have appropriate agreements with the applicable State entity to participate in Medicaid and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan. Sites must also understand and accept that these officers will periodically be away from their assigned locations as they train for, or respond to, a regional and/or national health emergency.

Application Requests, Dates and Addresses

Application materials are available for downloading via the Web at *http://nhsc.bhpr.hrsa.gov* or by calling the National Health Service Corps "Call Center" at 1–800–221–9393.

Clinicians—The original of the completed application must be mailed or delivered no later than March 31, 2004 to: Division of Commissioned Personnel, ATTN: Recruitment and Assignment Branch, 5600 Fishers Lane, Room 4A–18, Rockville, MD 20857–0001. A copy of the completed application must be mailed or delivered no later than September 30, 2004 to: HRSA Commissioned Corps Operations Office, Parklawn Building, Room 13A–22, 5600 Fishers Lane, Rockville, MD 20857. Clinicians are encouraged to submit an application early, as applications will be considered as soon

as they are received. Applications delivered or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Sites—Completed applications must be postmarked or delivered to the NHSC by no later than September 30, 2004. Site applications will be evaluated as soon as they are received at NHSC headquarters. Sites will be deemed qualified based on the quality of the application submitted and the score of the HPSA in which they are located. Preference will be given to NHSC-approved sites in HPSAs with higher scores (the neediest HPSAs). Officers will be assigned to qualified sites on an ongoing basis. Sites are encouraged to apply early so as to have a better chance of acquiring one of the commissioned officers. The number of qualified sites is expected to exceed the limited supply of commissioned officers. Completed site applications should be mailed or delivered to: National Health Service Corps, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857. Applications delivered or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Dated: February 19, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–4204 Filed 2–25–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17134]

Commercial Fishing Industry Vessel Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: CFIVSAC will meet on March 30 and 31, 2004, from 8 a.m. to 5 p.m. The meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 8, 2004. Written material for distribution at the meeting should reach the Coast Guard on or before March 22, 2004. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 14, 2004. Send written material with 25 copies and requests to make oral presentations to Ensign Ken Rockhold, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

ADDRESSES: CFIVSAC will meet at the Hotel Galvez, 2024 Seawall Boulevard Galveston, Texas 77550. The Web site can be found at: *http://www.galveston.com/accom/galvez.html.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Ken Vazquez, Assistant to the CFIVSAC Executive Director, telephone (202) 267–0478, fax (202) 267–0506. Information about the CFIVSAC, up to date meeting information, and a listing of the past meeting minutes are available at the following Web site: *http://www.uscg.mil/hq/g-m/cfvs/cfivac.htm.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. This meeting is open to the public. Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Brief from the Coast Guard on the Arctic Rose casualty report. The brief will cover lessons learned and recommendations.

(3) Updated status report from the Coast Guard on the commercial fishing vessel World Wide Web site and other communication issues.

(4) Updated report on the implementation of the Personal Digital Assistant Performance Job Aid.

(5) Presentations on substandard commercial fishing vessels.

(6) Vessel stability presentation by the Society of Naval Architects and Marine Engineers (SNAME).

(7) Discussions and working group sessions by the subcommittees on Risk-based Decision-making examinations, training and drill documentation, and production of damage control pamphlets.

Procedural

The meetings are open to the public. Please note the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than March 8, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than March 22, 2004. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than March 14, 2004. Send written material with 25 copies and requests to make oral presentations to Ensign Ken Rockhold, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director at the location listed in the **ADDRESSES** section of this notice as soon as possible but no later than March 8, 2004.

Dated: February 19, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–4281 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior; Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, March 12, 2004, Time 1:30 p.m. to 4 p.m.

ADDRESSES: Former 1915 Lehighton High School, 110 North Third Street, Lehighton PA 18235.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the

Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: February 19, 2004.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–4241 Filed 2–25–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 29, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Steven R. Leigh, Urbana, IL, PRT–079994.

The applicant requests a permit to import biological samples from mandrill (*Mandrillus sphinx*) collected from a semifree-ranging colony in Gabon, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Mitchel Kalmanson, World Wide Exotic Talent Agency, Maitland, FL, PRT–079894.

The applicant requests a permit to export two male and two female captive-born tigers (*Panthera tigris*) to Deep Down Discovery/Ocean World, Puerto Plata, Dominican Republic, for the purpose of enhancement of the species through conservation education.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Allen Dearmond, Baton Rouge, LA, PRT–083232 and 083284.

The applicant requests permits to import two polar bears (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Dated: February 13, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–4294 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before March 29, 2004 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No.: TE–081310.

Applicant: Thomas L. Richards, Los Osos, California.

The applicant requests a permit to take (locate, handle, measure, and release) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with demographic studies in San Luis Obispo County, California, for the purpose of enhancing its survival.

Permit No.: TE–081298.

Applicant: Daniel H. Weinberg, Berkeley, California.

The applicant requests a permit to take (harass by survey) the Conservancy

fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California and Oregon for the purpose of enhancing their survival.

Permit No.: TE–081296.

Applicant: Loafer Creek Management, Oroville, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE–081306.

Applicant: Howard O. Clark, Fresno, California.

The applicant requests a permit to take (spotlight, capture, radio collar, mark, collect biological samples, and release) the San Joaquin kit fox (*Vulpes macrotis mutica*) in conjunction with scientific research throughout the range of the species for the purpose of enhancing its survival.

Permit No.: TE–081529.

Applicant: Sandia National Laboratories, Livermore, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander Sonoma County distinct population segment (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California for the purpose of enhancing its survival.

Permit No.: TE–039161.

Applicant: Lara Tikkanen Reising, La Mesa, California.

The permittee requests an amendment to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with demographic studies in San Diego County, California, for the purpose of enhancing their survival.

Permit No.: TE–054011.

Applicant: John Green, Riverside, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with demographic studies in San Diego, San Bernardino, Orange, and Riverside Counties, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: February 12, 2004.

Michael Fris,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–4259 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: March 9, 2004, 1–4 pm.

ADDRESSES: The meeting will be held at the Ni Source, 801 East 86th Avenue, Merrillville, Indiana. The Council Coordinator is located at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. Canadian and U.S. Small grant proposals will be considered at the Council meeting. The tentative date for the Commission meeting is June 16, 2004.

Dated: February 17, 2004.

Paul Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 04–4295 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting Announcement

AGENCY: National Park Service, Interior.

ACTION: Announcement of Denali National Park Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Denali National Park Subsistence Resource Commission will be held at Healy, Alaska. The purpose of the meeting will be to review Federal Subsistence Board wildlife proposals and continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be held on Friday, March 5, 2004, from 9 a.m. to 5 p.m. at the Nord Haven Motel, Healy, Alaska. GSA regulations (41 CFR 102–3.150) governing advisory committee meetings allow us, in exceptional circumstances, to give less than 15 days advance notice prior to an advisory committee meeting. It is necessary for us to publish this notice less than 15 days prior to the meeting so that the work of the committee can be made available for consideration at the March 9, 2004, meeting of the Southcentral Regional Advisory Council meeting.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence and Cultural Resources Manager at (907) 683–9544 or (907) 455–0673.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order.
2. Roll call and confirmation of quorum.
3. Superintendent's welcome and introductions.
4. Approval of minutes from last Commission meeting.
5. Additions and corrections to draft agenda.
6. Public and other agency comments.
7. Old Business.
a. Cantwell Resident Zone Hunting Plan.
b. Denali Backcountry Management Plan.
c. North Access and Facilities Studies.
d. Predator-Prey research studies.
8. New Business.
a. Federal Subsistence Wildlife proposals for 2004–2005.
b. ATV use in Denali.
c. Alaska Board of Game Wildlife Proposals 2004–2005.
9. NPS reports and updates.
a. Moose surveys: Kantishna Hills, Cantwell areas.
b. Salmon Surveys.
c. Community Harvest Assessments.
d. Visitor Center Interpretative Displays.
e. Nikolai-Telida Village History Report.
f. October 2003 SRC Chairs Workshop Report.
10. Public and other agency comments.
11. Set time and place of next Denali SRC meeting.
12. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

Dated: February 20, 2004.

Kathryn C. Collins,

Acting Regional Director, Alaska.

[FR Doc. 04–4284 Filed 2–25–04; 8:45 am]

BILLING CODE 4312–64–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on February 12, 2004, a proposed consent decree in *United States* v. *J.R. Simplot Company*, Case No. CV–S–04–0162–KJD–PAL, was lodged with the United States District Court for the District of Nevada.

In this action, the United States sought injunctive relief and civil penalties under section 113(b) of the Clean Air Act ("CAA") against Simplot for violations of permitting and new source review requirements of the CAA and the federally enforceable State Implementation Plan for Nevada at Simplot's silica sand processing facility in Overton, Nevada. The consent decree requires Simplot to: (1) Install air pollution control equipment and modify processes at its facility, (2) modify its permits, and (3) pay a civil penalty of $525,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States* v. *J. R. Simplot Company*, D.J. Ref. #90–5–2–1–06987.

The consent decree may be examined at the Office of the United States Attorney, 333 Las Vegas Blvd. South, Suite 5000, Las Vegas, Nevada, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation under (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $24.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–4213 Filed 2–25–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on February 11, 2004, a proposed Consent Decree in *United States* v. *Sporting Goods Properties, Inc.*, Civil Action No. 3:04 CV 242 (PCD), was lodged with the United States District Court for the District of Connecticut.

In this action, the United States sought recovery for natural resource damages relating to the release of hazardous substances, including lead, and lead shot, at the site known as the Remington Gun Club—Lordship Point Gun Club Site, located in Stratford, Connecticut ("the Site"). The United States filed its complaint pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), seeking recovery of all damages resulting from injuries to natural resources related to the Site, and the reasonable costs incurred in assessing such injuries. The complaint names defendant sporting Goods Properties, Inc. as the current owner of the Site and as the owner at the time of the release of hazardous substances. Sporting Goods Properties, Inc. was known as the Remington Arms Company, Inc. before November 30, 1993. The proposed Consent Decree resolves the United States' natural resource damage claims against Sporting Goods Properties, Inc. Under the proposed Decree, the settling defendant agrees to pay approximately $250,000 in compensation for natural resource damages, and reimbursement for assessment costs. In addition, the settling defendant is required to install an indigenous grassland community at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sporting Goods Properties, Inc.*, D.J. Ref. 90–11–2–06638.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Connecticut Financial Center, New Haven, CT. During the public comment period, the Consent

Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, without the attachments, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–4214 Filed 2–25–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1397]

Meeting of the Global Justice Information-Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information-Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global*.

DATES: The meeting will take place on Wednesday, April 21, 2004, from 1 p.m. to 5 p.m. e.t., and Thursday, April 22, 2004, from 8:30 a.m. to 12 Noon e.t.

ADDRESSES: The meeting will take place at the Hyatt Regency Reston, Reston Town Center, 1800 Presidents Street, Reston, VA 20190; Phone: (703) 709–1234.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532. [**Note:** This is not a toll-free number]; E-mail: *mccrearj@ojp.usdoj.gov*.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information-sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, State, tribal, and Federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information-sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

J. Patrick McCreary,

Global DFE Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 04–4250 Filed 2–25–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 20, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-Mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB 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 collection; 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 submission of responses.

Agency: Employment Standards Administration.

Type of Review: New Collection.

Title: Claim for Reimbursement of Benefit Payments and Claims Expense Under the War Hazards Compensation Act.

OMB Number: 1215–ONEW.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 20.

Annual Responses: 80.

Total Burden: 40.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected is used by the Office of Workers' compensation Programs (OWCP) staff to process requests for reimbursement of WHCA benefit payments and claims expenses submitted by insurance carriers and self-insureds. The information is also used by OWCP to decide whether it should opt to pay ongoing WHCA benefits directly to the injured worker.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–4206 Filed 2–25–04; 8:45 am]

BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 92–6—Sale of Individual Life Insurance or Annuity Contracts by a Plan

AGENCY: Employee Benefits Security Administration, Department of Labor.

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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration is soliciting comments on the proposed extension of Prohibited Transaction Class Exemption 92–6, pertaining to the sale of individual life insurance or annuity contracts by a plan.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before April 26, 2004.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Security Act of 1974 (ERISA) the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of ERISA.

Recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The disclosure requirements protect plan participants by putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured, and by giving the participants the right of first refusal to purchase such contracts.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- 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

The Office of Management and Budget's (OMB) approval of this ICR will expire on June 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 92–6.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0063.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 8,360.

Responses: 8,360.

Estimated Total Burden Hours: 1,671.

Estimated Total Burden Cost (Operating and Maintenance): $3,093.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: February 20, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–4244 Filed 2–25–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 85–68—To Permit Employee Benefit Plans To Invest in Customer Notes of Employers

AGENCY: Employee Benefits Security Administration, Department of Labor.

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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration is soliciting comments on the proposed extension of Prohibited Transaction Class Exemption 85–68, which permits employee benefit plans to invest in customer notes of employers.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before April 26, 2004.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington,

DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Prohibited Transaction Class Exemption 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. This ICR requires that records pertaining to the transaction be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- 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

The Office of Management and Budget's (OMB) approval of this ICR will expire on July 31, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 85–68.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0094.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 525.

Frequency: On Occasion.

Responses: 1900.

Average Response Time: [if applicable]: 1 hour.

Estimated Total Burden Hours: 1900 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: February 20, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–4245 Filed 2–25–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 91–55—Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Employee Benefits Security Administration, Department of Labor.

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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration is soliciting comments on the proposed extension of Prohibited Transaction Class Exemption 91–55, pertaining to transactions between individual retirement accounts and authorized purchasers of American Eagle coins.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before April 26, 2004.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption 91–55 permits purchases and sales by certain "individual retirement accounts," as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins ("Coins") in principal transactions from or to broker-dealers in Coins that are "authorized purchasers" of Coins in bulk quantities from the United States Mint and which are also "disqualified persons," within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest-free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under the Employee Retirement Income Security Act of 1974 (ERISA).

The information collection request for this exemption includes three requirements. First, certain information related to covered transactions in Coins must be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of this information is provided to persons directing investments in an IRA when transactions in Coins occur. The

exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA.

The recordkeeping requirement facilitates the Department's ability to make findings under section 408 of ERISA and section 4975(c) of the Code. The confirmation and disclosure requirements protect a participant or beneficiary who invests in IRAs and transacts in Coins with authorized purchasers by providing the investor or the person directing his or her investments with timely information about the market in Coins and about the individual's account in particular.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- 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

The Office of Management and Budget's (OMB) approval of this ICR will expire on June 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 91–55.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0079.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 2.

Responses: 12,800.

Frequency: On occasion.

Estimated Total Burden Hours: 554 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: February 20, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–4246 Filed 2–25–04; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–031]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, March 9, 2004, 8 a.m. to 3:30 p.m; and Wednesday, March 10, 2004, 8 a.m. to 3 p.m.

ADDRESSES: George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Building 4200, Conference Room P110, Marshall Space Flight Center, AL 35812–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- The Vision for Space Exploration and FY 05 Budget Request;
- NASA Office of Exploration Systems;
- Update on Return to Flight;
- Information Technology Working Group Activities.

To expedite attendance to the NASA Advisory Council Meeting, attendees must submit their full name, company affiliation (if any), citizenship, place of birth, and date of birth to NASA Marshall Space Flight Center's Protective Services Department by March 4, 2004. If above information has not been provided in advance, attendees should expect a minimum delay of two hours. Persons attending must state upon entrance to Redstone Arsenal (via Gate 9, Rideout Road/Research Park Blvd) that they are attending the NASA Advisory Council meeting. At which time, the driver will be asked to provide a valid driver's license, vehicle registration and proof of insurance; and each vehicle occupants will be required to provide a valid picture identification. Directions and passes will be provided upon entrance. Submit information via fax to 256–544–2101 or please contact the Protective Services Department at 256–544–4310 for further information.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–4303 Filed 2–25–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–030)]

President's Commission on Implementation of United States Space Exploration Policy; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the President's Commission on Implementation of United States Space Exploration Policy.

DATES: Wednesday, March 3, 2004, 1 p.m. to 5 p.m. and March 4, 2004, 9 a.m. to 6 p.m.

ADDRESSES: United States Air Force Museum, 1100 Spaatz Street, Wright Patterson AFB, Ohio 45433–7102. (937) 255–3286.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Schmidt, Office of the Administrator, National Aeronautics and Space Administration, Washington, DC, (202) 358–1808.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Competitiveness and prosperity;
- Science and technology;
- Management and sustainability;
- Education and youth.

It is not possible to accommodate the full notice period because of the short time frame in which the Commission is expected to finish its work and write its report. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–4302 Filed 2–25–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its June 24, 2003, application for proposed amendment to Facility Operating License No. DPR–66 for the Beaver Valley Power Station, Unit No. 1, located in Beaver County, Pennsylvania.

The proposed amendment would have revised the Technical Specifications to clarify the steam generator tube inspection definition and the steam generator tube repair criteria.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 5, 2003 (68 FR 46243). However, by letter dated February 9, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, *see* the application for amendment dated June 24, 2003, and the licensee's letter dated February 9, 2004, which withdrew the application for license amendment. 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 email to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 20th day of February, 2004.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E4–408 Filed 2–25–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 2005.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

James D. Foster,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C (Revised February 2004)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January 2005. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html,* the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/circulars/a094/a094.html,* and a table of past years' rates is located at *http://www.whitehouse.gov/omb/circulars/a094/DISCHIST–2004.pdf.* Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

Nominal Discount Rates. A forecast of nominal or market interest rates for 2004 based on the economic assumptions from the 2005 Budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

Nominal Interest Rates on Treasury Notes and Bonds of Specified Maturities (in percent)

3-year	5-year	7-year	10-year	30-year
3.0	3.7	4.2	4.6	5.5

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2005 Budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

Real Interest Rates on Treasury Notes and Bonds of Specified Maturities (in percent)

3-year	5-year	7-year	10-year	30-year
1.6	2.1	2.4	2.8	3.5

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 04–4228 Filed 2–25–04; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: 69 FR 7988, February 20, 2004

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, February 25, 2004, at 12 noon.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Wednesday, February 25, 2004, has been cancelled.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: February 23, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4360 Filed 2–24–04; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933; Release No. 8389/ February 20, 2004]

[Securities Exchange Act of 1934; Release No. 49290/February 20, 2004]

Order Regarding Review of FASB Accounting Support Fee for 2004 Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the "Act") establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as "generally accepted" for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under section 109(f), the annual accounting support fee shall not exceed the amount of the standard setter's "recoverable budget expenses." Section 109(h) amends section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2004. In connection with its review, the Commission also reviewed the proposed budget for the FAF and the FASB for calendar year 2004.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards to be used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB will accept contributions from the accounting profession.

After its review, the Commission determined that the 2004 annual accounting support fee for the FASB is consistent with section 109 of the Act. Accordingly,

It is ordered, pursuant to section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4271 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

[1] Financial Reporting Release No. 70.

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933; Release No. 8390/ February 20, 2004]

[Securities Exchange Act of 1934; Release No. 49291/February 20, 2004]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2004

The Sarbanes-Oxley Act of 2002 (the "Act") established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Act. Under section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission.

The PCAOB adopted a budget for calendar year 2004 at an open meeting on November 25, 2003, and submitted that budget to the Commission for approval on November 26, 2003. In accordance with its responsibilities to oversee the PCAOB, the Commission has reviewed the budget proposed by the PCAOB for 2004 and its aggregate accounting support fee for 2004, which will fund the PCAOB's expenditures. During the course of that review, among other things, we reviewed and relied upon representations and supporting documentation from the PCAOB. The Commission did not identify any proposed disbursements in the budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2004 annual accounting support fee does not exceed the PCAOB's aggregate recoverable

budget expenses for 2004. After its review, the Commission determined that the PCAOB's 2004 budget and annual accounting support fee are consistent with section 109 of the Act. Accordingly,

It is ordered, pursuant to section 109 of the act, that the PCAOB budget and annual accounting support fee for calendar year 2004 are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4272 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49292; File No. SR–BSE–2004–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Proposing to Initiate a Pilot Program that Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading under $20

February 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to initiate a pilot program ("Pilot Program") that will allow for the listing of options on selected stocks trading below $20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics*.

* * * * *

RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of options contracts on BOX

Chapter IV Securities Traded on the Boston Options Exchange Facility

Sec. 6 Series of Options Contracts Open for Trading

(a)–(f) no change

The following rules are in effect until June 5, 2004

Supplementary Material to Section 6

.01 The interval between strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less, provided however, that BOX may not list $2.50 intervals below $20 (e.g. $12.50, $17.50) for any class included within the $1 Strike Price Pilot Program, as detailed below in Supplementary Material .02, if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart. Exceptions to the strike price intervals above are set forth in Supplementary Material .02 below.

.02 $1 Strike Price Pilot Program:

a. The interval between strike prices of series of options on individual stocks may be $1.00 or greater ("$1 Strike Prices") provided the strike price is $20 or less, but not less than $3. The listing of $1 strike prices shall be limited to option classes overlying no more than five (5) individual stocks (the "$1 Strike Price Pilot Program") as specifically designated by BOXR. BOXR may list $1 Strike Prices on any other option classes if those classes are specifically designated by other national securities exchanges that employ a similar $1 Strike Price Pilot Program under their respective rules.

b. To be eligible for inclusion into the $1 Strike Price Pilot Program, an underlying security must close below $20 in the primary market on the previous trading day. After a security is added to the $1 Strike Price Pilot Program, BOXR may list $1 Strike Prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying security closes at $13, BOXR may list strike prices from $8 to $18. BOXR may not list series with $1 intervals within $0.50 of an existing $2.50 strike price (e.g. $12.50, $17.50) in the same series. Additionally, for an option class selected for the $1 Strike Price Pilot Program, BOXR may not list $1 Strike Prices on any series having greater than five (5) months until expiration.

c. A security shall remain in the $ 1 Strike Price Pilot Program until otherwise designated by BOXR. The $1 Strike Price Pilot Program shall expire on June 5, 2004.

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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The BSE 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 amend a section of the Rules of the Boston Options Exchange (the "BOX Rules") relating to the interval between strike prices of series of options on individual stocks. Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Section 6, *Series of Contracts Open for Trading*, of the Box Rules establishes guidelines regarding the addition of series for trading on BOX. The BSE proposes to amend this section of the BOX Rules to implement a pilot program, which will operate until June 5, 2004, and which will allow Boston Options Exchange Regulation, LLC ("BOXR"), the wholly owned subsidiary of the BSE that has been delegated regulatory authority over BOX,[3] to list options on up to five underlying equities trading below $20 at one-point intervals and to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange ("Pilot Program").

Pilot Program: The BSE notes that stock prices in general have dropped over the past few years, with many listings suffering severe declines. As a result, there has been a proliferation of stocks trading below $20. Some of these stocks are among the most widely held and actively traded equity securities listed on the New York Stock Exchange, Inc., the American Stock Exchange LLC ("Amex"), and Nasdaq, including, for example, Cisco, Oracle, Lucent, JDS Uniphase, AT&T, and Motorola.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49065 (January 13, 2004) 69 FR 2768 (January 20, 2004).

Accordingly, the options overlying these stocks are among the most actively traded options.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, when a stock trades at $10 an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. A 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that has recently accompanied many stocks and options. Accordingly, BOX Participants have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in achieving their investment strategies. For this reason, the Exchange proposes to implement the proposed Pilot Program for BOX.

Pilot Program Eligibility: The BSE proposes to amend Chapter IV, Section 6 of the BOX Rules to allow BOXR to list options on selected stocks trading below $20 at one-point intervals, provided that the strike prices are $20 or less, but not less than $3. An option would become eligible for inclusion in the Pilot Program provided that the underlying stock closed below $20 in its primary market on the preceding trading day. Once the underlying stock is part of the Pilot Program, BOXR may continue to list $1 strike prices provided the underlying stock remains below $20. As described more fully below, although an option class will not be removed automatically from the Pilot Program if the underlying stock trades at or above $20, BOXR will not add $1 strike prices when the underlying stock closes above $20. Once the stock closes below $20, it will again be eligible for the addition of $1 strike prices. An underlying stock will remain in the Pilot Program until BOXR removes it from the Pilot Program. Options on stocks trading under $20 that are not included in the Pilot Program may continue to trade in $2.50 and $5.00 strike price intervals. Although BOXR may only select up to five individual stock options for its Pilot Program, BOXR will not be precluded from also listing at $1 strike price intervals equity options included in the $1 strike price programs of other option exchanges.

Procedure for Adding $1 Strike Price Intervals: Chapter IV, Section 6 of the Box Rules will be amended to set forth the standards regarding the addition of $1 strike price intervals. Under the Pilot Program, the closing price of the underlying stock serves as the reference point for determining which $1 strike prices BOXR may open for trading. To minimize the proliferation of options series, BOXR intends to restrict the number of $1 strike prices that may be added to those strikes that fall within a $5 range of the price of the underlying stock. BOXR will not add strike prices outside of the $5 range. For example, if the underlying stock trades at $6, BOXR could list $1 strike prices from $3 to $11, while if the underlying stock trades at $10, BOXR could list $1 strikes from $5 to $15. By restricting the number of strike prices that may be listed to a predetermined $5 range, BOXR believes it will be able to provide investors with more flexibility without burdening the Options Price Reporting Authority ("OPRA") capacity by bringing up strike prices that are not reasonably related to the price of the underlying stock.

Currently, when an underlying stock trades below $25, BOXR may list strike prices with $2.50 intervals. For this reason, several classes may have $7.50, $12.50, and $17.50 strike prices. To further avoid the proliferation of series, BOXR does not intend to list $1 strike prices at levels that "bracket" existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). Accordingly, BOXR does not intend to list $7, $8, $12, $13, $17, and $18 levels in an expiration month where there is a corresponding $2.50 level. As the $2.50 intervals are "phased-out," as described below, BOXR will introduce the $1 levels that bracket the phased-out price. For example, when a $7.50 series expires, BOXR will replace it by issuing a new expiration month with $7 and $8 strike price intervals.

Procedures for Phasing Out $2.50 Strike Price Intervals: When an individual stock becomes a part of the Pilot Program, BOXR will begin to phase out the existing $2.50 strike price intervals for options on that stock in favor of the $1 strike price intervals. To phase-out the $2.50 strike price intervals, BOXR first will delist any $2.50 series for which there is no open interest. Second, BOXR will no longer add new expiration months at $2.50 strike price intervals below $20 when existing months expire. This will cause the $2.50 strike price intervals below $20 to be phased out when the farthest-out month with a $2.50 interval expires.

$1 Strikes for Longer Dated Options: BOXR will not list $1 strikes on any series of individual equity option classes that have greater than five months until expiration.

Procedures for Adding Expiration Months: Chapter IV, Section 6(e) of the BOX Rules will govern the addition of expiration months for $1 strike series. Pursuant to this section, BOXR generally opens up to four expiration months for each class upon the initial listing of an options class for trading. Thus, for options included in the Pilot Program, BOXR will list an additional expiration month upon expiration of the near-term month, provided that the underlying stock prices closes below $20 on Expiration Friday. If the underlying closes at or above $20 on its primary market on Expiration Friday, BOXR will not list an additional month of $1 strike price series until the stock again closes below $20.

Procedures for Delisting $1 Strike Price Intervals: At any time, BOXR may cease listing $1 strike prices on existing series by submitting a cessation notice to The Options Clearing Corporation ("OCC").[4] As discussed above, if the underlying closes at or above $20 on its primary market on Expiration Friday, BOXR will not list any additional months with $1 strike prices until the stock subsequently closes below $20. If the underlying stock does not subsequently close below $20, thereby precluding the listing of additional strike prices and months, the existing $1 series eventually will expire. When the near-term month is the only series available for trading, BOXR may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the five option classes available on BOX pursuant to the Pilot Program, thereby allowing BOXR to list options on an additional stock at $1 strike price intervals. Once BOXR submits the cessation notice it will not list any additional months pursuant to the Pilot Program for trading with strikes below $20, unless the underlying stock again closes below $20.[5]

OPRA Capacity: BOXR believes that OPRA has the capacity to accommodate the increase in the number of series that could be added pursuant to the Pilot Program. On a daily basis, the options exchanges use an average of less than 7,000 messages per second ("mps") during peak periods, which is less than

[4] The reasons for submitting a cessation notice are as follows: (1) Expiration of available $1 strikes (*i.e.*, the underlying stock price remains at or above $20); (2) series proliferation concerns; and (3) delisting because of, among other things, low price, merger, or takeover. In any event, with prior notice to BOX Participants and customers, BOXR will continue to have the ability to cease trading any series that has become inactive and has no open interest.

[5] If the underlying stock trades below $20 after BOXR submits a cessation notice, BOXR could again list options on that stock at $1 strike prices provided BOXR included the class as one of its five allowable classes.

25% of the total system capacity of 32,000 mps. Furthermore, to date, the options exchanges have not exceeded 11,000 mps for any extended period of time. Therefore, the Exchange believes that implementing the Pilot Program would not have a negative impact on OPRA system capacity.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by granting the Exchange authority to implement a Pilot Program to list options under certain circumstances at one-point intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date so that the Exchange may remain competitive with other exchanges that currently have similar rules in effect. The proposed rule change is virtually identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.[11] Notice of the CBOE Pilot was published for comment [12] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the proposed rule change raises no new issues of regulatory concern. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,[13] and, therefore, the proposal is effective and operative upon filing with the Commission.

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–BSE–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2004–01 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4269 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR–CBOE–2001–60).

[12] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[13] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49287; File No. SR–CBOE–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to its Autoquote Triggered Ebook Execution System

February 19, 2004.

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 2, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. On September 10, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 29, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2003.

[4] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 22, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.8(d)(v) governing the operation of its "Trigger" functionality. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc.

Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section A: General

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

RULE 6.8

(a)–(c) No change.
(d) Execution on RAES
(i)–(iv) No change.
(v) Notwithstanding sub-paragraph (d)(iv), for classes of options as determined by the appropriate Floor Procedure Committee *("FPC")*, for any series of options where the bid or offer generated by [the Exchange's] Autoquote [system (or any] (Exchange *or* [approved] proprietary [quote generation system used in lieu of the Exchange's Autoquote system]) is equal to or crosses the Exchange's best bid or offer as established by an order in the Exchange's limit order book, orders in the book for options of that series will be automatically executed against participants on RAES ("Trigger") up to a size not to exceed the number of contracts equal to the applicable maximum size of RAES-eligible orders for that series of options ("Trigger Volume"). The appropriate [Floor Procedure Committee] *FPC* is responsible for determining the Trigger Volume for a particular series of options. In the event a member in the trading crowd verbally initiates a trade with a book order prior to the time the book staff announces to the trading crowd that the order has been removed from the book by Trigger, the book staff will manually endorse the book order to that member(s).

In the event the order in the book is for a larger number of contracts than the applicable Trigger Volume, the balance of the book order [will] *may* be executed manually by the trading crowd. In the limited circumstance where contracts remain in the book after an execution *(or partial execution)* of a book order up to the applicable Trigger Volume, [and the disseminated quote] *the bid or offer generated by Autoquote will be one-tick inferior to the price of the book order such that the disseminated quote will not* [remains] cross[ed] or lock[ed] with the Autoquote bid or offer. *In these instances,* or for any series where Trigger has not yet been implemented by the appropriate [Floor Procedure Committee] *FPC*, orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions.

* * * * *

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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.8(d)(v), which governs the operation of the Autoquote Triggered EBook Execution system ("Trigger").[5] Trigger allows orders resting in the book to be automatically executed in the limited situation when the Autoquote (Exchange or proprietary) bid (offer) for a series would equal or cross the Exchange's best offer (bid) for that series as established by a booked order.[6] In these instances, Trigger removes from the book and automatically executes and assigns to market makers orders up to the RAES eligible order size for that series ("Trigger Volume"). If the size of the order in the book exceeds the applicable Trigger Volume size, the balance of the booked order is executed manually by the trading crowd, in full, at the book price.

The operation of Trigger results in the full size of the booked order being executed, regardless of its size and without regard to the Autoquote disseminated size. For example, if the order in the book is for 200 contracts and the Trigger Volume level is set at 50 contracts, all 200 contracts in the book receive execution (50 via Trigger and the balance via open outcry). This has the result of requiring crowds to execute orders of a size greater than their disseminated firm quote size. To address this, CBOE proposes to amend the Rule to provide that Trigger will continue to provide automatic execution up to the Trigger volume level but that the crowd may determine to execute manually any remaining balance of the order in open outcry. Any unexecuted balance of the book order in excess of the Trigger Volume level will remain in the book (as is the case today) and the Autoquote will remain crossed or locked. This proposal would have the effect of giving the crowd the ability to execute the remaining contracts (in excess of the Trigger Volume level) without obligating them to do so.

For illustrative purposes, consider the following example:

	Price	Size
AQ	1.00 × 1.20	100 × 100
Book	0.95 × 1.10	10 × 2500

[5] The Commission approved the rule governing the Trigger system in Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2002) (approving SR–CBOE–00–22) ("Original Order"). For a detailed description of the operation of the Trigger system, see the Original Order and Securities Exchange Act Release No. 45992 (May 29, 2002), 67 FR 38530 (June 4, 2002) (approving SR–CBOE–2002–12).

[6] Although Autoquote would cross or lock the order in the book, the Exchange does not disseminate the crossed or locked market. Instead, the disseminated bid (offer) will be one tick away from the book offer (bid). For example, if the Autoquote bid would lock the book offer at 1.30, the disseminated quote will be 1.25 × 1.30, with the 1.25 representing Autoquote and the 1.30 representing the book. Additionally, for Trigger-situations, the DPM typically sets a default size (*e.g.*, 10 contracts) that is smaller than the actual disseminated size for non-Trigger situations.

	Price	Size
Bestquote	1.00 × 1.10	100 × 2500

Trigger Vol.: 50 contracts
AQ Default Size: 10 contracts

Assume a move in the underlying causes AQ to want to move to 1.10 × 1.30. This activates Trigger (*i.e.*, AQ bid would lock the book offer—1.10 × 1.10). In this instance, Trigger automatically executes the book order up to the Trigger Volume level (50 contracts) and assigns the contracts to market makers in the crowd. Because the Exchange will not disseminate a locked market, however, the disseminated quote will be 1.05—1.10, 10×2450. The 1.10 offer represents the balance of order in the book. The 1.05 bid represents the Autoquote price and default size. The crowd will have the ability to manually execute the remaining contracts at 1.10. When the balance of the book order trades, the new disseminated Autoquote price will be 1.10 × 1.30.

The Exchange submits that Rule 11Ac1–1 under the Act (the "Quote Rule"),[7] in its simplest form, requires the responsible broker or dealer ("responsible BD") to be firm for its quotes (for price and size). The Exchange notes that in Trigger situations, the responsible BD on the Exchange is firm for all of its disseminated quotes. CBOE notes that there are three relevant periods relating to Trigger and explains how the operation of Trigger during each period is consistent with the Quote Rule, as follows.

Immediately Prior to Trigger Activation: Prior to the change in the underlying price that causes a change in the Autoquote price, the Exchange disseminates a 1.00 × 1.10, 100 × 2500 size market, for which it is firm. The $1.00 bid represents the crowd's autoquote while the $1.10 offer represents an order in the book.

At the time of Trigger Activation and Immediately Thereafter: When a Trigger situation occurs (*i.e.*, the autoquote bid would lock the book offer), it is important to note that the Exchange does NOT disseminate a locked or crossed market. Instead of sending a $1.10 bid, autoquote internally calculates a price that is one tick lower than the locked price ($1.05) and then sends that quote, which the Exchange collects and disseminates to quotation vendors as a firm quote. In this instance, the Exchange's disseminated offer is still for the balance of the book order (2450 contracts) at $1.10. Because Autoquote does not send and hence CBOE does not disseminate a $1.10 bid, CBOE states that there is no firm quote liability for a 1.10 bid. The disseminated 1.10 offer is still firm.

The operation of Trigger results in the removal of contracts from the book for execution by the crowd. Today, the whole size of the book order is removed from the book. This has the result of forcing the trading crowd to buy (sell) all 2500 contracts in the book, even if they do not desire to purchase (sell) all of them and even though their disseminated size was substantially smaller. While the Quote Rule requires the responsible BD to be firm for quotes it disseminates, CBOE states that nothing in this rule requires an entity to purchase (sell) the entire size of the disseminated quote (*i.e.*, the BD who puts up the quote must be firm, not the person who tries to hit it). In fact, according to CBOE, this is completely inconsistent with the Quote Rule, as it imposes an unfair obligation upon the trading crowd (*i.e.*, to buy (sell) the entire size of the book order) where there rightly is none.

The Exchange notes that the filing proposes to amend what it views as an inequitable operation of Trigger such that only a number of contracts equal to the Trigger Volume Size would now be removed. The remainder of the contracts would stay in the book where they may be executed against by either the crowd or any other person that wants to trade with that order. The proposed change to the rule language of Rule 6.8(d)(v), which states "the balance of the book order may be executed manually by the trading crowd" clarifies this point.

Additionally, CBOE states that, because CBOE's own Quote Rule[8] is based on, and operates in compliance with, the SEC's Quote Rule, its proposal is also consistent with the SEC's Quote Rule. The Exchange represents that it is firm for all of the quotes it disseminates. Furthermore, the Exchange submits that Rule 11Ac1–1(b)(1)(i)[9] requires an Exchange to, among other things, "* * * collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security * * *" In this regard, the Exchange states that it collects and disseminates all quotes sent to it. Autoquote does not send, and hence CBOE states that it does not have an obligation to collect and disseminate, a quote that would lock the book price. For this reason, the Exchange submits that its proposal satisfies all of the Exchange's obligations under the Quote Rule.

2. Statutory Basis

According to CBOE, the proposal would continue to ensure that customers receive automatic executions of their booked orders up to the Trigger Volume level. The proposal is also consistent with the Quote Rule in that the CBOE crowd, as the responsible BD, will continue to honor its disseminated quotes. Therefore, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with the section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[7] 17 CFR 240.11Ac1–1.

[8] CBOE Rule 851.

[9] 17 CFR 240.11Ac1–1(b)(1)(i).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4270 Filed 2–25–04; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49283; File No. SR–CHX–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Stop Order Handling Rules

February 19, 2004.

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 August 11, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 17, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XXX, Rule 22, which governs handling of stop orders. Specifically, the proposed rule change would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, should be treated as a market order for purposes of determining the execution price due the order.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

Chicago Stock Exchange Rules

Article XXX

Specialists

* * * * *

Stop Orders

RULE 22. *A stop order to buy becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange or association at or above the stop price. A stop order to sell becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange at or below the stop price.* A specialist must not initiate a transaction for his own account in a stock in which he is registered that would result in putting into effect any stop order he may have on his book. However, a specialist may be party to the election of a stop order only when his bid or offer made with the approval of a Floor Official has the effect of bettering the market and when he guarantees that the stop order will be executed at the same price as the electing sale.

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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 CHX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 proposed rule change, as amended, would amend CHX Article XXX, Rule 22, which governs the handling of stop orders. Specifically, the proposed rule change, as amended, would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, would be treated as a market order for purposes of determining the execution price due the order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 28, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the originally filed proposal in its entirety.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the originally filed proposal, as superceded by Amendment No. 1, in its entirety.

The Exchange does not currently have a rule that defines a stop order or a rule that sets out the required treatment of elected stop orders and believes that it is appropriate to provide certainty to its members and the investors that they serve by putting such a rule in place.[5] Under the Exchange's proposal, stop orders would no longer be executed in accordance with the Exchange's "next, no better" policy. Rather, a stop order would be defined as an order that becomes a market order once the price of the stop order is equaled or penetrated on a national securities exchange or association.[6] The Exchange represents that this proposed handling of a stop order is in line with the rules of other markets, including the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the Pacific Exchange, Inc. and provides an appropriate fill for stop orders sent to the Exchange for execution.[7]

2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with section 6(b)[8] of the Act, in general, and furthers the objectives of section 6(b)(5)[9] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–CHX–2003–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–2003–25 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4223 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

[5] Although the Exchange does not currently have a rule defining stop orders, the Exchange has operated under a long-standing policy relating to stop orders; the standing policy provides that a stop order in a listed security that is routed to the CHX (and then elected by a primary market print at the stop price) is given a "next, no better" execution, meaning that the order must be executed at the next execution price on the primary market. If the next primary market execution is at a price better than the election price, the order may be executed at the election price. Otherwise stated, if the next primary market execution is at a better price than the election price, the CHX specialist has the discretion to provide either the election price or the better price.

[6] On the CHX, market orders are executed in accordance with CHX Article XX, Rule 37, which requires that (a) market orders executed automatically be executed at the national best bid or offer in effect at the time the order was received; and (b) market orders executed manually be executed by the specialist in his principal capacity at the national best bid or offer in effect at the time the order was received, or, if the specialist elects to act as agent for the order, at the best available price in the national marketplace, using order routing systems where appropriate. If the Commission approves this proposed rule change, elected stop orders would be executed in accordance with the provisions of CHX Article XX, Rule 37. An elected stop order would be eligible for automatic execution if it were within the auto ex size threshold designated by the specialist in accordance with CHX Article XX, Rule 37(b)(1).

[7] *See, e.g.*, NYSE Rule 13 ("A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd"); Amex Rule 131 (same text as NYSE Rule 13); and Archipelago Exchange Facility Rule 7.31("A stop order to buy becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Order to sell becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or below the stop price").

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49286; File No. SR–NASD–2004–004]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Regarding Listing Fee Waivers Under the NASD Rule 4500 Series With Regard to Certain Dual Listing and Transfer Situations

February 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amended the proposed rule change on February 13, 2004.[3] Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to provide interpretive guidance with respect to NASD Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) regarding the waiver of listing fees in situations involving the dual listing or transfer of New York Stock Exchange ("NYSE") listed securities occurring from January 12, 2004, to December 31, 2004.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4500 ISSUER LISTING FEES

IM–4500–1 No change.

IM–4500–2 No change.

IM–4500–3 Waiver of Fees in Situations Involving the Dual Listing or Transfer of New York Stock Exchange ("NYSE") Listed Securities

Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of its listing fees prescribed in this Rule 4500 series. Nasdaq shall not charge entry fees, annual fees, or listing of additional shares fees under Rules 4510(a)–(d) and Rules 4520(a)–(c) for a one year period from the date of listing on Nasdaq for any NYSE listed security that dually lists on Nasdaq between January 12, 2004, and December 31, 2004. Nasdaq shall not charge entry fees under Rules 4510(a) and 4520(a) for any NYSE listed security that transfers its listing from the NYSE to Nasdaq between January 12, 2004, and December 31, 2004.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of its listing fees prescribed in this Rule 4500 series. NYSE Rule 500 has recently been repealed, and this has removed a significant barrier to NYSE companies that may have wanted to list on other markets.[6] Given the recent repeal of NYSE Rule 500, and pursuant to the authority under Nasdaq rules, Nasdaq has determined to permit dual listing of any NYSE listed security on Nasdaq without charging Nasdaq entry fees, annual fees, or listing of additional shares fees for a period of one year from the effective date of the dual listing on Nasdaq (provided that, if a dually listed issuer determines following the expiration of this period to transfer listing to Nasdaq, the entry fee or a portion thereof will be assessed upon such transfer). Nasdaq also has determined to permit transfer of any NYSE listed security from the NYSE to Nasdaq without charging Nasdaq entry fees. Waivers would be available for dual listing or transfers occurring from January 12, 2004, the date of this filing, through the end of 2004.

Nasdaq has determined to take this action because it believes that is equitable and reasonable to provide a window, following the repeal of NYSE Rule 500, for NYSE issuers to dual list on Nasdaq or transfer to Nasdaq without subjecting them to fees in addition to those fees that they have paid to the NYSE. In addition, consistent with section 11A(a)(1)(C)(ii) under the Act,[7] Nasdaq believes this action will promote fair competition between exchange markets and markets other than exchange markets, which benefits the investing public. Specifically, Nasdaq believes this interpretation should facilitate dual listing and transfer of NYSE listed securities under an equitable and reasonable fee schedule for a limited period of time. Consequently, NYSE listed companies can more easily determine the benefits of a listing on Nasdaq—a proposition that was not practically available until NYSE Rule 500 was recently repealed. Nasdaq believes these benefits will include increased liquidity, faster executions, and narrower spreads due to Nasdaq's competitive market maker system. In addition, these companies can demonstrate to investors that they meet Nasdaq's governance requirements. Nasdaq confirms that this interpretation will not impact its resource commitment to regulatory oversight of the listing process, or its other regulatory programs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[8] and 15A(b)(6)[9] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Nasdaq believes that this proposal is an equitable allocation of reasonable fees because NYSE listed companies are now able to list on other markets without having to contend with the significant restrictions previously imposed by the NYSE, and the proposed rule provides for listing fee waivers to address the financial burdens that would otherwise be placed upon these companies that have already paid fees to the NYSE and would otherwise be required to pay duplicative fees. Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the

[3] *See* February 12, 2004, letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq (1) changed date references from January 9, 2004, to January 12, 2004, to reflect the date on which the proposed rule change was filed with the Commission; (2) amended the "Purpose" section of the filing to reflect that Nasdaq will assess the entry fee or a portion thereof if a dually listed issuer determines, following the expiration of the initial one-year period, to transfer listing to Nasdaq; and (3) confirmed that the proposed interpretation will not impact Nasdaq's resource commitment to regulatory oversight of the listing process or Nasdaq's other regulatory programs. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 13, 2004, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] *See* Securities Exchange Act Release No. 48720 (October 30, 2003), 68 FR 62645 (November 5, 2003)(SR–NYSE–2003–23) (approval order).

[7] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78o–3(b)(6).

Act because it is designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest because it will facilitate dual listing and transfer of NYSE listed securities for a limited period of time, so that NYSE listed companies can more easily determine the benefits of listing on Nasdaq. Nasdaq also believes the proposal will promote fair competition between markets, which benefits the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[10] and Rule 19b-4(f)(1)[11] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change,[12] 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. 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–NASD–2004–004. This file number should be included on the subject line if e-mail is used. To help the Commission 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2004–004 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4268 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] *See* note 3 *supra*.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4632]

Bureau of Democracy, Human Rights and Labor Call for Statements of Interest: Democracy, Human Rights, and the Rule of Law in the People's Republic of China

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL) announces a call for statements of interest from organizations interested in being invited to submit proposals for projects on promoting democracy, human rights and the rule of law in China. This is an initial solicitation to ascertain organizations that may be interested in doing projects in China and does not constitute a request for proposals. Organizations invited to submit proposals will have an opportunity to expand on their statements at a later date.

Statements of Interest: The Bureau of Democracy, Human Rights and Labor (DRL) invites organizations to submit statements of interest of no more than two pages outlining program concepts and capacity to manage projects that will foster democracy, human rights, freedom of information, judicial independence, criminal and civil rule of law, civil society, freedom of the press, and media reform in the People's Republic of China. Statements should include the following information:

(1) Brief description of the organization;

(2) Project objectives, activities and the desired outcomes.

Recipients should not submit a budget at this time, but responses should indicate approximate project totals.

Additional Information: The Bureau's Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs that uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

DRL is interested in funding projects to begin no earlier than September 30, 2004 and not to exceed two years in duration. Twelve- to eighteen-month programs will be the preferred award period. The bulk of project activities must take place in-country; U.S-based activities or exchange projects are not encouraged. Projects that draw on resources from greater China will be considered, but the majority of activities should address the PRC and Hong Kong directly. Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Projects that focus on commercial law or economic development will not be highly considered.

Pending availability of funds, approximately $10,500,000 is expected to be available under the Economic Support Funds through the HRDF for projects that address DRL objectives in China. The Bureau anticipates making awards in amounts of $250,000–$850,000 to support program and administrative costs required to implement these programs.

Applicant/Organization Criteria: Organizations submitting statements should meet the following criteria:

- Be a U.S. non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

• Have demonstrated experience administering successful projects in China or in similar challenging program environments. (Organizations that have not previously received and successfully administered U.S. government grant funds will be subject to additional scrutiny before being invited to submit a proposal.)

• Have existing, or the capacity to develop, active partnerships with in-country organization(s).

• Organizations may form consortia and submit a combined statement of interest.

Review Process: The Bureau will acknowledge receipt of all submissions. Following a review of all submissions, organizations may be invited to submit full proposals. Invitations will be based on subjective evaluation of how the project meets the criteria outlined, U.S. foreign policy objectives, and priority needs of DRL.

Deadline and Submission Instructions: Applicants should submit statements of interest by overnight express services such as Federal Express or DHL to: the U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Room 7802, 2201 C Street, NW., Washington, DC 20520. Due to slow mail processing within the Department of State, we do not recommend submitting proposals via the U.S. postal system. Faxed documents will not be accepted at any time. All submissions must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. eastern standard time (E.S.T.) on Friday, March 12, 2004.

Note: Due to new security restrictions, we are no longer able to accept hand-delivered or courier-delivered proposals.

Additional Information: This Call for Statements of Interest will also appear on the Bureau's Web site at *http://www.state.gov/g/drl/* under Human Rights and Democracy Fund and on *http://www.grants.gov.*

Note: Beginning in 2005, DRL will no longer publish solicitations in the **Federal Register.** DRL will publish its solicitations only on *http://www.grants.gov* and the Bureau Web site.

FOR FURTHER INFORMATION CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Rana Siu, (202) 647–0984, on all inquiries and correspondence.

Dated: February 23, 2004.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 04–4376 Filed 2–25–04; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance: Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the even exchange of a parcel of airport property for an adjacent parcel owned by the City of Madison, WI. Parcels to be exchanged comprise 0.958 acres located in the northwest environs of the airport. The airport-owned parcel is not needed for aeronautical use as currently identified on the Airport Layout Plan.

The acreage comprising the airport-owned parcel was originally acquired in 1983 under Grant No. AIP 3–55–0036–02. The proposed use of this parcel is to provide replacement acreage for the "taking," or use of 0.958 acres of City of Madison-owned property which has been determined to be encumbered by both Department of Transportation (DOT) Section 4(f), and Land and Water Conservation Fund (LWCF) Act Section 6(f). Use of the City of Madison-owned DOT Section 4(f) and LWCF Section 6(f)-encumbered parcel is necessary to accommodate realignment of a rail line to a location outside of the Runway 13 runway safety and object free areas, and Runway 13 and 18 approach surfaces. Improvements to the runway safety and object free areas and approach surfaces are to be accomplished through an airport capital improvement project. The airport property to be exchanged will serve as mitigation for the "taking" of the City of Madison-owned DOT Section 4(f) and LWCF Section 6(f)-encumbered parcel. An environmental assessment was prepared to address environmental impacts associated with the proposed runway safety area and approach surface capital improvement project. The airport sensor has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The airport owner wishes to transfer ownership of the parcel to the City of Madison, Wisconsin. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this location, or at Dane County Regional Airport, Office of Airport Manager, 4000 International Lane, Madison, WI.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Dane County Regional Airport in Madison, Wisconsin, and described as follows:

A parcel of land located in the SE1/4–SE1/4 of Section 18, T8N, R10E, Township of Burke, Dane County, Wisconsin, described as: Commencing at the Southeast corner of said Section 18, thence N0° 47′47″ E, 1327.46 feet, along the East line of said SE1/4 to the Northeast corner of said SE1/4–SE1/4; thence N89° 40′40″ W, 241.03 feet along the North line of said SE1/4–SE1/4 to the point of beginning; thence S35° 29′18″ W, 48.07 feet; N89° 40′40″ W, 1048.55 feet to the West line of said SE1/4–SE1/4; thence N0° 40′29″ E, 39.30 feet, along said West line to the Northwest corner of said SE1/4–SE1/4; thence S89° 40′40″ E, 1076.00 feet along the North line of said SE1/4–SE1/4, to the point of beginning. Parcel contains 0.958 acres, more or less.

Issued in Minneapolis, MN on February 5, 2004.

Nancy Nistler,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 04–4291 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Martin County Airport/ Witham Field, Stuart, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Martin County Board of County Commissioners under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 30, 2003, the FAA determined that the noise exposure maps submitted by the Martin County Board of County Commissioners under Federal Aviation Regulations (FAR) part 150 were in compliance with applicable requirements. On January 26, 2004, the Administrator approved the Martin County/Witham Field noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Martin County Airport/Witham Field noise compatibility program is January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Bonnie Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 130. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Martin County Airport/Witham Field, effective January 26, 2004.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. the noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Martin County Board of County Commissioners submitted to the FAA on May 23, 2003, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 2000, through November 2003. The Martin County Airport/Witham Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 30, 2003. Notice of this determination was published in the **Federal Register** on August 11, 2003.

The Martin County Airport/Witham Field study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2007. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on July 30, 2003, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-one (21) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective January 26, 2004.

Out right approval was granted for seventeen (17) of the twenty-one (21) specific program elements. Three (3) elements were disapproved for the purposes of part 150, and one (1) element was partially approved. The approval action was for the following program measures:

Operational Measures

OPS1 Preferential Runway Use

This measure calls for the preferential use of Runway 12 during calm winds (approximately 10% of the time) to reduce the population within the highest noise impact areas. This measure increases the population within the 60–65 DNL by 90, and decreases the population within the 65–70 DNL by 48. (NCP, pages 5–7 and 5–8; Final version dated November 4,

2003, pages 5–6 and 5–7; Response to FAA Comments, page 2; Exhibit OPS1; and Table 5.1)

FAA Action: Disapproved for purposes of FAR part 150. This measure does not satisfy FAR part 150 approval criteria because it does not provide an overall reduction in numbers of noise-impacted population.

OPS2 Ban of Stage 1 Aircraft

This measure recommends conducting the necessary study and analysis to facilitate the future prohibition of Stage 1 aircraft from using Martin County Airport. (NCP, page 5–8; Final revision dated November 4, 2003, pages 5–7 and 5–8; Table LU.1; Response to FAA Comments, page 3; Exhibits OPS2; Table 5.1)

FAA Action: Disapproved for purposes of FAR part 150. The analysis contained in the NCP states that implementing a ban on Stage 1 aircraft would not impact the noise contour used for comparison in this study (2007, with and without program measures). Also, the FAA notes that Measure LU1, described below, may allow construction of new residences within the DNL contour selected by the airport sponsor as locally significant (*i.e.*, DNL 60–65 dB). Local actions to permit new incompatible construction in a DNL contour selected by the airport sponsor as locally significant would not be reasonably consistent with achieving the goal of reducing noncompatible land uses and preventing the introduction of additional noncompatible uses (49 U.S.C. 47504(b)(1)(B), and part 150 § 150.35(b)(1)). Also, to approve a measure under part 150, it must not be unjustly discriminatory (§ 150.35(b)(1)).

OPS3 Voluntary Stage 2 Aircraft Night-time Curfew

This measure is to discourage Stage 2 operations between the hours of 10 p.m. and 7 a.m. This measure would decrease the population within the 60–65 DNL by 96 people and decreases the population within the 65–70 DNL by 68. (NCP, pages 5–10; Final revision dated November 4, 2003, pages 5–10; Response to FAA Comments, page 4; Exhibit OPS3; and Table 5.1)

FAA Action: Approved as a voluntary measure. The NCP analysis assumes a high rage of compliance with this measure based on current compliance rates. This measure is proposed to be accomplished with continued pilot education. There will be no mandatory enforcement.

OPS4 Voluntary Touch-and-Go Limits

This measure provides a voluntary ban on Touch-and-go's at night (10 p.m. to 7 a.m.) Monday thru Saturday and all day Sunday and on major holidays. This measure discourages touch-and-go operations consistent with existing procedures, and includes 24 hours on Sundays, New Year's, Thanksgiving, and Christmas holidays. This measure decreases the population within the 65–70 DNL contour by 22, and decreases the population within the DNL 60–65 dB 31. (NCP, pages 5–10; Final revision dated November 4, 2003, page 5–10; Response to FAA Comments, page 4; Exhibit OPS4; and Table 5.1)

FAA Action: Approved as a voluntary measure. The NCP analysis assumes 100% compliance based on current compliance rates. This measure must be accomplished with continued pilot education and will not include mandatory enforcement.

OPS5 Runway 12 Voluntary Noise Abatement Departure Flight Track

This measure is the voluntary use of straight-out departure track for jet aircraft departing Runway 12. This measure decreases the population within the 60–65 DNL by 64, and increases the population within the 65–70 DNL by 5. (NCP, pages 5–11 thru 5–12; Final revision dated November 4, 2003, pages 5–10 and 5–11; Response to FAA Comments, pages 5–6; Exhibits OPS5; and Table 5.1)

FAA Action: Approved as voluntary when a pilot requests to proceed to the ocean before making a turn, when traffic, weather, and airspace safety and efficiency conditions permit ATC to approve the request. This measure assumes an average of one operation per day will utilize this voluntary measure. While this measure does increase by a small number the residents in the 65–70 DNL contour, it reduces the population included in the 60–65 DNL contour, providing a net decrease in people exposed to noise. Current airspace constraints to the north and south of Martin County significantly curtail the use of this procedure. As airspace allocations are adjusted by Air Traffic, the NCP may be updated to analyze additional compliance with this measure.

OPS6 Runway 30 Voluntary Noise Abatement Departure Flight Track

This measure includes a voluntary left turn to 285 degrees for jet aircraft departing Runway 30. This measure decreases the population within the 60–65 DNL by 48 and decreases the population within the 65–70 DNL by 76. (NCP, pages 5–12 thru 5–13; Final revision dated November 4, 2003, pages 5–12 and 5–13; Response to FAA Comments, page 6; Exhibit OPS6; and Table 5.1)

FAA Action: Approved as voluntary when a pilot requests the turn, when traffic, weather, and airspace safety and efficiency conditions permit ATC to approve the request. Current airspace constraints to the north and south of Martin County significantly curtail the use of this procedure. As airspace allocations are adjusted by Air Traffic, the NCP may be updated to analyze additional compliance with this measure.

OPS7 Voluntary Takeoff and Landing Procedures

This measure recommends the use of NBAA or manufacturer noise abatement takeoff and landing procedures by jet aircraft operators. Air carrier aircraft will be asked to use AC 91–53A close-in departure procedures. (NCP, page 5–13; Final revision dated November 4, 2003, page 5–13; Response to FAA Comments, page 7; and Tables 5.1)

FAA Action: Disapproved pending submission of additional information to make an informed analysis. This measure relates to flight procedures under 49 U.S.C. 47504(b). Information required to complete FAA action on this measure includes calculating the estimated benefits to noise-sensitive land uses near the airport. This information can be provided using either the DNL noise contour or using supplemental metrics such as describing the benefits with versus without the measure, on a single event basis.

The effectiveness of noise abatement procedures will vary on an airport-by-airport basis. There are three basic takeoff profiles—near, distant, and standard. Given variations in aircraft performance, it is possible for one aircraft type to use one type of procedure and another aircraft to use a different procedure to achieve noise reduction over the same community. The techniques used to determine the noise benefits of changes in approach settings are still under study in the U.S.

OPS8 Install Flight Tracking System

This measure is to install equipment to record the actual flight tracks of each operation to help monitor the effectiveness of NCP measures and to assist Martin County in the determination of the future need to update the noise exposure maps. The results will be used to encourage voluntary use of the noise abatement flight tracks, and will not be used for mandatory enforcement. (NCP, pages 5–

13 and 5–14; Final revision dated November 4, 2003, page 5–13; Response to FAA Comments, pages 7 and 8; and Table 5.1)

FAA Action: Approved. The flight tracking system must technically be able to interface with the FAA equipment and operations, and must comply with FAA data download requirements. Eligibility for Federal funding and scope of the proposed project will be determined at the time of application. For purposes of aviation safety, this approval does not extend to the use of monitoring equipment for enforcement purposes by in-situ measurement of any pre-set noise thresholds and shall not be used for mandatory enforcement of any voluntary measure.

OPS9 Pilot Information Program

This measure is to educate, inform, and notify pilots and airport users of the measures included in the NCP with the goal of increasing user participation in the program. (NCP, page 5–14; Final revision dated November 4, 2003, page 5–14; and Table 5.1)

FAA Action: Approved in concept. The methods to publicize this noise compatibility program are approved. Prior to release, each publicity measure must be approved for wording and content by the appropriate FAA office, and should clearly state that the noise abatement measures are voluntary, and that pilots, while encouraged to request the noise abatement departure heading, are always required to follow the directions provided by air traffic control.

OPS10 Monitor Air Traffic Control Frequencies

This measure will record and review Air Traffic and pilot radio frequencies to monitor effectiveness of NCP measures and operations during hours when the tower is closed. (NCP, pages 5–14 and 5–15; Final revision dated November 4, 2003, page 5–14; Response to FAA Comments, page 8; and Table 5.1)

FAA Action: Approved. This measure would involve purchasing over-the-counter radio-receiving equipment that is generally available to the public. The stated purpose is to determine how effective the noise abatement measures are. Information will be used to educate the pilots and community about the program, and will be used to assist in addressing citizen complaints. Eligibility for Federal funding and scope of the proposed project will be determined at the time of application. For purposes of aviation safety, this approval does not extend to the use of monitoring equipment for enforcement purposes and shall not be used for mandatory enforcement of any voluntary measure.

OPS11 Engine Run-up Procedures and Facilities

This measure is to continue the existing program limiting maintenance run-ups to the hours between 7 a.m. and 10 p.m., whenever possible, and to study potential new locations for run-up areas. This measure has the potential to reduce ground level noise prior to takeoff and landing. (NCP, pages 5–14. and 5–15; Final revision dated November 4, 2003, page 5–15; Response to FAA Comments, page 9; Table 5.1; and, Supplemental graphics Figure 5.1 "Potential Berm Sites and Operational Run-Up Locations")

FAA Action: Approved to continue the current procedure as a voluntary measure. Approved for further study of additional run-up locations.

OPS12 Noise Barriers

This measure will study potential benefits of the construction of noise barriers to reduce the impact of aircraft ground noise. This measure has the potential to reduce ground level noise prior to takeoff and landing. (NCP, pages 5–15 and 5–16; Final revision dated November 4, 2003, pages 5–15; Response to FAA Comments, page 9; and Table 5.1; Supplemental graphics Figure 5.1 "Potential Berm Sites and Operational Run-Up Locations")

FAA Action: Approved for further study.

Land Use Measures

LU1 Noise Zoning

This measure is to establish Overlay Districts within the County and City Zoning Ordinances. Zone A will include 65 DNL and greater, and Zone B will include 60 to 65 DNL. This measure is to ensure that areas presently zoned as compatible remain, and change non-compatible to compatible. (NCP revision, pages 5–17 through 5–20, and Appendix H, pages 10–12; Response to FAA Comments, page 10; Table 5.2; and, Revised Table LU.1)

FAA Action: Approved in part, disapproved in part. This is a preventive land use measure and is within the authority of the local land use planning jurisdictions.

The narrative at pages 5–19 and 5–20 describe the zones as follows. Zone A would prohibit new noise sensitive development within the DNL 65 dB and greater noise contour, including residential development. Nonresidential commercial development would require sound attenuation. Zone B would prohibit schools, childcare, and similar noise-sensitive uses. Other nonresidential commercial development would require sound attenuation. *These designations are approved.*

We note that LU7 suggests an intention to limit new land uses in Zones A and B to compatible uses; however, residences are not specifically mentioned in the description of prohibited land uses in Zone B, and are assumed to be permitted in that zone's DNL 60–65 dB noise contour. To the extent that Zone B is intended to permit new residential land uses, *this designation is disapproved for purposes of part 150.* It would not be reasonably consistent with achieving the goal of reducing noncompatible land uses and preventing the introduction of additional noncompatible uses (40 U.S.C. 4750(b)(1)(B)) to allow new residences within the DNL 60–65 dB noise contour since the local government has adopted the DNL 60–65 dB standard as locally significant. Neither would it be consistent with the FAA's land use mitigation policy published in 1998. Future mitigation of any noise-sensitive development that occurs after October 1, 1998, will not be eligible for part 150 approval under the FAA's 1998 policy. Disapproval under part 150 does not prevent the local planning jurisdictions from carrying out their own land use plans to meet local needs.

LU2 Real Estate Disclosure

This measure is to disclose properties located within the 60 DNL and higher noise contours to notify purchasers of where the property is located within the NEM contours. It will also notify them of the possibilities of aircraft noise and overflights. (NCP revision, pages 5–20 and 5–21 and Appendix H, pages 12–13; Response to FAA Comments, page 10; and Table 5.2)

FAA Action: Approved.

LU3 Site Plan Review

Using the Intergovernmental Coordination Element of the Comprehensive Plan, this measure contemplates developing a policy to allow the airport to participate in site plan review. All proposed site plans for property within the DNL 60–65 dB noise contour for 2007 will be reviewed. An interlocal agreement may be required before this action can be implemented. This measure also is intended to ensure consistency with measure LU1. (NCP revision page 5–21, and Appendix H, page 13; Response to FAA Comments, page 10; and Table 5.2)

FAA Action: Approved.

LU4 Citizens Noise Committee

This measure is to establish a committee for the purpose of monitoring the effectiveness and implementation of the NCP measures and to conduct public education. The committee will make recommendations to the Board of County Commissioners. It will assist the airport staff with the monitoring of the NCP measures, community involvement and pilot education. (NCP revision, page 5–21, and Appendix H, page 14; and Table 5.2)

FAA Action: Approved.

LU5 Florida Statute 333, Airport Zoning

This measure will incorporate provisions consistent with Florida Statute 333, Airport Zoning Regulations to enhance land-use compatibility in the airport environs. By adopting this measure, the City and County will recognize the statute's provisions and incorporate it in whole or by reference in their comprehensive plans and land development codes. (NCP revisions, pages 5–21 and 5–22; Response to FAA Comments, page 11; and Table 52.)

FAA Action: Approved.

LU6 Voluntary Land Acquisition

This measure is for voluntary acquisition or sales assistance within the 60–65 DNL and 65–70 DNL noise contours. The sponsor will either purchase and relocate eligible residents in impacted areas or eligible property owners will be offered sales assistance if direct purchase and relocation is not acceptable to the owner. This program will comply with the Federal Uniform Relocation Act. (NCP revision, page 5–22, Appendix H, page 15; Response to FAA Comments, page 11; and Table 5.2)

FAA Action: Approved. The specific identification of structures recommended for inclusion in the program and specific definition of the scope of the program will be required prior to approval for Federal funding.

The FAA Federal guidelines state that impacts at noise levels of DNL 65 dB and greater are "significant" and lesser noise levels of DNL 55 to 64 dB are "moderately" impacted, (see compatible land use guidelines in Table 1 of FAR part 150). Properties located at levels less than the Federal "significant" criterion, such as the DNL 60 dB identified as locally significant by the airport sponsor, will receive a much lower priority for Federal financial assistance.

The airport operator has adopted a local deviation from the Federal land use compatibility guidelines published in FAR part 150, Table 1 (see revised NCP Chapter 5, Table LU.1). The FAA notes that the adopted guidelines allow construction of non-compatible uses within those noise levels defined as "significant" by the airport operator. The FAA will not approve mitigation of noise-sensitive structures built after October 1, 1998.

LU7 Redevelopment Program

This measure encourages re-development of acquired or vacant property to a compatible use within the 60–65 DNL and 65–70 DNL noise contours. This includes properties acquired under LU6. If the property were resold, it would be subject to aviation easements attached to the deed to ensure long-term compatibility. The Federal Uniform Relocation Act will be satisfied for acquisitions with Federal funds. (NCP revision, page 5–22; Response to FAA Comments, page 12; and Tables 5.2)

FAA Action: Approved to prepare a redevelopment plan for property acquired as part of this Record of Approval.

LU8 Voluntary Sound Insulation Program

This measure proposes to develop a voluntary sound insulation program for existing sensitive receptors within the 60–65 DNL and 65–70 DNL noise contours. Existing structures will be renovated to include required NLR standards. A priority system will be established that includes mitigation for structures in the highest noise levels first. (NCP revision, page 5–23; Response to FAA Comments, page 12; and Tables 5.2)

FAA Action: Approved. The specific identification of structures recommended for inclusion in the program and specific definition of the scope of the program will be required prior to approval for Federal funding.

The FAA Federal guidelines state that impacts at noise levels of DNL 65 dB and greater are "significant" and lesser noise levels of DNL 55 to 64 dB are "moderately" impacted, (see compatible land use guidelines in Table 1 of FAR Part 150). Properties located at levels less than the Federal "significant" criterion, such as the DNL 60 dB identified as locally significant by the airport sponsor, will receive a much lower priority for Federal financial assistance.

The airport operator has adopted a local deviation from the Federal compatible land use guidelines published in FAR part 150, Table 1 (see revised NCP Chapter 5, Table LU.1). The FAA notes that the adopted guidelines allow construction of non-compatible uses within those noise levels defined as significant by the airport operator. FAA will not approve mitigation of noise-sensitive structures built after October 1, 1998.

LU9 Voluntary Aviation Easement Acquisition Program

This measure allows for the purchase of easements within the 60–65 DNL and 65–70 DNL noise contours to ensure continued land use compatibility of properties where the County has taken other actions to mitigate noise within the DNL 60 dB noise contour. A property owner, in exchange for sound insulation, may grant an easement as outlined in LU8 above. Easements may also be purchased from property owners who are eligible but choose not to participate in a sound insulation program. Easements may also be placed on a property acquired under LU6 or LU7. (NCP revision, page 5–23; and Table 5.2)

FAA Action: Approved. The specific identification of structures recommended for inclusion in the program and specific definition of the scope of the program will be required prior to approval for Federal funding.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on January 26, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Martin County.

Issued in Orlando, Florida, on February 10, 2004.

Matthew J. Thys,

Acting Manager, Orlando, Airports District Office.

[FR Doc. 04–4192 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Georgetown Municipal Airport, Georgetown, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Georgetown for the Georgetown Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation

Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 26, 2004.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul Blackford, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5607.

Mr. Travis McLain, P.O. Box 409, Georgetown, Texas 78627, (512) 930–3666.

Ms. Michelle Hannah, Texas Department of Transportation, Aviation Division, 125 East 11th Street, Austin, Texas 78701–2483, (512) 416–4500.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Georgetown Municipal Airport are in compliance with applicable requirements of part 150, effective January 26, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict nonprojected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the city of Georgetown. The documentation that constitutes the "noise exposure maps" as defined in § 150.7 of part 150 includes: Exhibits 1, 2, 3A, 3E–3G, and Tracks 4A, 4B, 4D and 4E. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 26, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; city of Georgetown, P.O. Box 409, Georgetown, Texas. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, January 26, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–4196 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Finding of No Significant Impact.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Finding of no significant impact.

SUMMARY: The Federal Aviation Administration (FAA) prepared an Environmental Assessment (EA) to evaluate the East Kern Airport District (EKAD) proposal to operate a commercial launch facility at the Mojave Airport in Mojave, California. The EA also evaluated the potential environmental impacts of launches of two types of horizontally launched suborbital vehicles (Concept A and Concept B) proposed to be launched from the Mojave Airport. The EKAD owns and operates the Mojave Airport and must comply with the California Environmental Quality Act (CEQA) to operate a launch facility at the Mojave Airport. The EKAD was responsible for complying with the responsibilities of CEQA. In addition to the launch site operator license application from EKAD, Scaled Composites, LLC, is requesting a launch specific license and proposes to conduct up to six licensed launches in 2004 of the SpaceShipOne launch vehicle. This launch vehicle is similar to the Concept A vehicle described and analyzed in the EA. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the FAA, Office of the Associate Administrator for Commercial Space Transportation (AST) has determined that licensing the operation of the proposed launch site and issuing a launch specific license for up to six launches of the SpaceShipOne launch vehicle would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore the preparation of an Environmental Impact Statement (EIS) is not required and AST is issuing a Finding of No Significant Impact (FONSI). The FAA made this determination in accordance with all applicable environmental laws.

FOR A COPY OF THE FINDING OF NO SIGNIFICANT IMPACT REGARDING EKAD LAUNCH OPERATIONS AND SCALED COMPOSITES LAUNCH SPECIFIC LICENSE CONTACT: Ms. Michon Washington, FAA Environmental Specialist, Mojave Airport EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031 or refer

to the following Internet address: *http://ast.faa.gov.*

DATES: The Draft EA was released for public comment on October 31, 2003. In addition, the FAA held a public hearing on December 10, 2003 in Mojave, California to collect comments from the public. All comments received before December 12, 2003 were considered in the preparation of the Final EA.

Proposed Actions: Operation of a non-Federal launch site in the United States, such as EKAD's proposed operation of a launch site at the Mojave Airport, in Mojave, California, and launches of launch vehicles, such as Scaled Composites' proposed launches of the SpaceShipOne vehicle from the Mojave Airport must be licensed by the FAA pursuant to 49 U.S.C. Sections 70101–70119, formerly the Commercial Space Launch Act. Licensing the operation of a launch site and a launch vehicle are Federal actions requiring environmental analyses by the FAA in accordance with NEPA, 1969, 42 U.S.C. Sec. 4321 *et seq.* Upon receipt of complete license applications, AST must determine whether to issue a license to EKAD to operate a launch site at the Mojave Airport and whether to issue a launch specific license to Scaled Composites for up to six launches of the SpaceShipOne launch vehicle from the Mojave Airport. An environmental determination is required for the evaluation of license applications.

The launch site would be located at the Mojave Airport. No construction activities are proposed as part of this action. Existing infrastructure including hangars and runways would be used to support launch and landing operations at the proposed launch site. Existing rocket test stands may also be used for static testing of rocket engines.

The proposed EKAD launch site operator license would be for the purpose of operating a facility to launch horizontally launched, suborbital rockets. Under the proposed action, the FAA would issue a launch site operator license to the EKAD for the Mojave Airport for the purpose of operating a facility to launch horizontally launched, suborbital rockets. In addition, the EKAD may offer other services for commercial launch vehicle manufacturing, and other testing and manufacturing activities. These services and other testing and manufacturing activities are unrelated to, and are not authorized by the Launch Site Operator License. Launch providers would be responsible for obtaining launch licenses from the FAA to conduct launches at the Mojave Airport. The FAA may use the analyses in the Final EA as the basis for environmental determinations of the impacts of these launches to support licensing decisions for the launch of specific launch vehicles from the Mojave Airport.

Proposed launch operations currently include launches of two types of launch vehicles. The first type referred to in the EA as Concept A includes air-drop designs where two vehicles, an airplane and launch vehicle are mated together and the airplane carries the launch vehicle to a predetermined altitude where the launch vehicle is dropped and its rocket engines ignite. The SpaceShipOne vehicle is similar to the Concept A vehicle described and analyzed in the EA. The second type of launch vehicle, referred to in the EA as Concept B, includes horizontally launched vehicles, which use rocket power to take off from a standard aviation runway. The EA addresses the overall impacts to the environment of the proposed operations anticipated for a five-year launch site license term to include the launch and landing of Concept A and B launch vehicles at the Mojave Airport and testing rocket engines that would be incorporated into Concept A and B launch vehicles.

The FAA and the U.S. Air Force (USAF) are involved in the proposed action. The FAA is the lead Federal agency for the NEPA process and is responsible for licensing and regulating EKAD's launch operations under 49 U.S.C. Subtitle IX-Commercial Space Transportation, ch. 701, Commercial Space Launch Activities. The Air Force Flight Test Center (AFFTC) is the host organization at Edwards Air Force Base, which is located 48 kilometers (30 miles) east of the Mojave Airport. The AFFTC manages the special use airspace designated as Restricted Area R–2515 (contained within the R–2508 Complex), which would be the primary operating area for the vehicles launched from the Mojave Airport. Commercial and private agencies that operate aircraft in the R–2508 Complex maintain appropriate Letters of Agreement (LOA) with both the R–2508 Complex Control Board and the AFFTC for operation in their respective areas. In addition, USAF aircraft may use Mojave Airport for some missions. The AFFTC also operates the airfield, which would serve as the primary emergency landing site for the launch vehicles. These entities also have a responsibility for the environment and assets on the ground, which have the potential to be affected by launches. Therefore, the FAA requested and the USAF agreed to participate as a cooperating agency in the preparation of NEPA analysis for this proposed action. The EKAD is the lead agency for CEQA. On December 16, 2003 the EKAD adopted a Negative Declaration for the proposed action pursuant to the CEQA.

Alternatives Considered: Alternatives analyzed in the EA included (1) the proposed action, issuing a launch site operator license to the EKAD for the operation of a launch site at Mojave Airport for Concept A and Concept B launch vehicles, (2) issuing a launch site operator license to the EKAD for the Mojave Airport for Concept A launch vehicles only, (3) issuing a launch site operator license to EKAD for the Mojave Airport for Concept B launch vehicles only, and (4) the no action alternative.

Under the No Action Alternative, the FAA would not issue a launch site operator license to EKAD for launches of Concept A and Concept B launch vehicles from the Mojave Airport. No launches of Concept A or Concept B launch vehicles would take place from the Mojave Airport. The Airport would continue to operate as a general aviation airport and predicted environmental impacts from the proposed action would not occur.

Environmental Impacts

Safety and Health

A hazard analysis is a necessary part of the Mission and Safety Review for the FAA licensing determination to assess the possible hazards associated with proposed ground, flight, and landing operations. Launches of Concept A and B vehicles (including SpaceShipOne) from the Mojave Airport would require launch specific licenses from the FAA and each launch applicant (including Scaled Composites) would be required to conduct risk analyses based on the proposed mission profiles. The Mission and Safety Review will consider these analyses, and, therefore, they were not discussed in detail in this EA. However, analysis of the safety and health implications of launch related operations and activities that have the potential for environmental impact were considered in this EA.

Ground operations involved in servicing and preparing launch vehicles typically involve industrial activities, which were evaluated for potential impact on the environment. There are various hazards associated with these activities including

- Spill/fire/explosion of propellant/fuel storage, transport, handling, and loading;
- Traffic accidents due to increased activity on and off site; and
- Occupational mechanical accidents.

There would be some vapors of various propellants released from

propellant storage/transfer operations through evaporative losses. However, such vapors would be vented outside and at a height that would provide adequate protection for personnel, buildings and the environment. Also, the total quantity of emissions would not occur as a large acute (short-term) exposure, but would occur as a slow vapor release over a long period of time. There is also the concern of spills of propellants during handling and loading operations and subsequent fire or explosion. However, the Mojave Airport has established practices and procedures to handle the spills and releases of propellants.

Increased road traffic that would result from conducting the proposed launch operations at the Mojave Airport would only add a few cars/trucks above existing traffic loads. However, the increase in the number of shipments of hazardous materials should not significantly increase the number of traffic accidents on the roadways around the Mojave Airport.

On-site work associated with the conduct of launch operations would be similar to that associated with industrial chemical operations. Exposure to mechanical accidents should not differ significantly from current levels for the Mojave Airport because the number of operations associated with the conduct of launch operations would be relatively small given the number of operations airport wide.

In a catastrophic accident, it would be likely that the crew would be seriously injured or killed. At the Airport, the on-site fire department would respond and secure the site, but would stay clear of the immediate area until the danger of explosions diminishes. It is expected that any fires resulting from a failure could be fought by the fire department. Additional off-site emergency response capability could also be used if necessary.

Air Quality

Air emissions may be generated during launch/landing operations, pre- and post-launch ground operations, and accidents. The proposed action does not include any changes to the physical structure of the airport (*e.g.*, runway) or any construction activities; therefore there are no construction vehicles or associated emissions and no construction-related dust or airborne particles. The air quality at the Mojave Airport in Eastern Kern County is in Federal non-attainment (serious) and State non-attainment (moderate) for ozone, and non-attainment for PM_{10} (California standards only). A Federal agency cannot support an action (*e.g.*, fund, license) unless the activity will conform to the Environmental Protection Agency-approved State Implementation Plan for the region. This is called a conformity determination or analysis. A conformity analysis may involve performing air quality modeling and implementing measures to mitigate the air quality impacts. The Federal government is exempt from the requirement to perform a conformity analysis if two conditions are met.

- The ongoing activities do not produce emissions above the *de minimis* levels specified in the rule.
- The Federal action must not be considered a regionally significant action. A Federal action is considered regionally significant when the total emissions from the action equal or exceed 10 percent of the air quality control area's emissions inventory for any criteria pollutant.

Air analyses indicated that nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions are 0.01 metric tons (0.01 tons) per year and 2.2 metric tons (2.4 tons) per year, respectively. These would not be above the *de minimis* level of 45.4 metric tons (50 tons) per year. In addition, the total emissions from the proposed action represent 0.0001 percent of the area's emissions inventory for NO_X and 0.05 percent of the area's emissions inventory for VOC, and therefore, are not regionally significant. Based on these data, there is no need for a Federal conformity analysis and no significant impacts to air quality are anticipated.

The National Ambient Air Quality Standard (NAAQS) for NO_X and VOC for areas in severe non-attainment is 25 tons per year. Therefore, for emissions resulting from the proposed action, there would be no exceedances of the NAAQS from the proposed action and an NAAQS assessment would not be required to evaluate the potential for significant air quality impacts under NEPA.

For Concept A vehicles (including SpaceShipOne), the EA addressed the impacts to air quality from both the carrier aircraft and the mated suborbital launch vehicle. The aircraft would have turbojet engines using Jet A–1 fuel. The Concept A launch vehicle would use a hybrid rocket engine with nitrous oxide (N_2O) and hydroxyl-terminated polybutadiene (HTPB) as propellants. There would be emissions from both the carrier aircraft and the launch vehicle components. To make emissions calculations for the carrier aircraft, it is assumed the aircraft would most closely resemble the T–38 Tiger aircraft which uses two J85–GE–5F engines. To estimate aircraft emissions, emission factors (*e.g.*, pounds released per takeoff/landing cycle) found in the EPA document Compilation of Air Pollutant Emission Factors for the T–38 aircraft were used. The takeoff/landing cycle includes idle, takeoff, climb out to 914 meters (3,000 feet), descent starting at 914 meters (3,000 feet), approach, and landing.

The analysis considered emissions in two categories, above 914 meters (3,000 feet) and below 914 meters (3,000 feet). The 914 meter (3,000 feet) altitude is an appropriate cutoff because the Federal government uses 914 meters (3,000 feet) and below for contributions of emissions to the ambient air quality and for *de minimis* calculations. Annual emissions from the carrier aircraft for a maximum of six flights would be 225.1 kilograms (496.3 pounds) of CO, 3.3 kilograms (7.3 pounds) of nitrogen oxides (NO_X), 28.3 kilograms (62.5 pounds) of volatile organic compounds (VOCs), and 1.7 kilograms (3.7 pounds) of sulfur dioxide (SO_X). Because NO_X and VOC emissions from the carrier aircraft are not above the *de minimis* level of 45.4 metric tons (50 tons) per year, there is no need for a Federal conformity analysis.

Emissions from the launch vehicle would occur from the combustion of N_2O and HTPB. For each flight, there would be an estimated 1,295 kilograms (2,855 pounds) of N_2O and 228 kilograms (503 pounds) of HTPB. The emissions would begin at an altitude of between 16 to 20 kilometers (10 to 12 miles) (troposphere and beginning of stratosphere). The emissions are based on propellant emission factors similar to those used in the Navy FA–18E/F EA. These emission factors are refined because the launch vehicle proposes to use N_2O and HTPB rather than perchlorate and HTPB as in the Navy EA. Thus, it was assumed that

- N_2O fully decomposes to oxygen and nitrogen,
- The oxygen fully reacts with the hydrogen in the HTPB to form water,
- The oxygen reacts with the carbon in HTPB to produce roughly ten times as much carbon monoxide (CO) as carbon dioxide (CO_2) (similar to FA–18E/F EA), and
- The nitrogen is released as nitrogen gas (N_2).

To estimate the total emissions, the emissions fractions were multiplied by the total amount of propellant used (1,523 kilograms [3,358 pounds]) and the number of flights expected per year. In a year with a maximum of six flights the emissions would be 274 kilograms (604 pounds) of CO_2, 1,828 kilograms (4,030 pounds) of CO, 2,011 kilograms

(4,433 pounds) of water, and 4,935 kilograms (10,880 pounds) of N_2. The propellant is fully expended above 914 meters (3,000 feet); therefore, there are no propellant combustion emissions for the proposed vehicle during landing.

There are also emissions from the carrier aircraft above 914 meters. Although these emissions were considered, it was generally assumed that aircraft emissions from the six proposed flights per year would be relatively small compared to a total of 18,301 aircraft flights occurring annually from the Mojave Airport.

Emissions can also occur from support equipment used during ground operations. This could include various trucks and equipment, although there would be relatively few used and therefore few emissions would be expected to result from their use. There would also be air emissions from fueling the carrier aircraft and storage of additional fuels. Each flight of the carrier aircraft would consume 2,903 kilograms (6,400 pounds) of Jet-A fuel. This would equal 21,804 liters (5,760 gallons) per year based on 1.25 liters per kilogram (0.15 gallons per pound) and six flights per year. Fuel use at the Mojave Airport during the 12-month period from July 2002 to June 2003 was 7,933,837 liters (2,095,898 gallons). An additional 21,804 liters (5,760 gallons) of fuel per year represents a small increase in annual Jet-A usage at the airport and, therefore, the emissions from storage and dispensing as a result of activities related to proposed launch operations would not be significant.

Because the emissions from the launch vehicle would originate far above the applicable altitude (914 meters [3,000 feet]) for the Federal or California ambient air quality standards, these emissions are not evaluated using these air ambient quality standards. Under Federal law, it would be necessary to conduct a conformity analysis for criteria pollutants that do not meet Federal attainment standards. Eastern Kern County is in serious non-attainment for ozone under Federal attainment standards. Therefore, if annual emissions of ozone precursors (VOC or NO_X) were above certain *de minimis* levels, it would be necessary to conduct a conformity analysis. Emissions analysis showed that NO_X and VOC emissions would not exceed *de minimis* levels of 45.4 metric tons (50 tons) per year. Based on emissions originating below 914 meters (3,000 feet) there is no need for a Federal conformity analysis. None of the emissions are expected to expose the nearby population or sensitive receptors to substantial pollutant concentrations. Also, the emission products should not expose the population to objectionable odors of types that do not already exist from airport operations (*e.g.*, fuel and exhaust odors).

Airspace

No significant impacts to Mojave Airport airspace would occur as a result of the proposed action. Conducting a maximum of six launches of the SpaceShipOne vehicle over a 12-month period would have no significant impacts on airspace. Conducting six launches per year would result in a 0.03 percent increase in activity at the Mojave Airport. Increased operations including all Concept A and B launches (up to 56 flights per year by 2008) for the proposed activity would represent an increase of 0.3 percent over the current annual flight rate at the Airport. This increase would not exceed the capabilities of the Mojave Airport facilities and control tower and would not result in a significantly higher probability of in-flight mishaps. No significant impacts to off-site airspace would occur as a result of the proposed action. The proposed action would occur almost exclusively in the R–2508 Complex. The Mojave Airport and several of its tenants have LOAs with the R–2508 Complex Control Board and the managers of individual restricted areas within the R–2508 Complex to operate within the various individual restricted areas (including R–2515). Any flights into the R–2508 Complex that are part of the proposed action that would create a significant impact to military activities would be prohibited by the scheduling and controlling agencies. Thus, the proposed action would not result in long-term changes to military operations or training within restricted airspace.

Biological Resources

Vegetation

The proposed action would use a designated runway at Mojave Airport for launches and landings of Concept A and B launch vehicles. The runways are routinely used for take-offs and landings by other aircraft, and no construction activities would be required to support launch operations. Because no development activities are planned, adverse effects to vegetation, including Joshua trees and creosote scrub, would not be anticipated.

In the unlikely event of an emergency landing, the pilot would attempt to reach the primary abort site at the main runway at Edwards Air Force Base. However, any airport within gliding range with a runway of at least 1,219 meters (4,000 feet) would be a candidate for an emergency landing location. Although the designated abort sites include areas where sensitive habitat and species may be present, it is unlikely that an emergency landing would occur at these sites, and therefore significant impacts to vegetation found at these sites would not be anticipated.

Wildlife

The proposed action would use a designated runway at Mojave Airport for launches and landings of Concept A and B launch vehicles. The runways are routinely used for take-offs and landings of other aircraft, and no construction activities would be required to support launch operations. As a result, no loss of habitat would be anticipated.

Because no construction activities are planned, no significant adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species would be anticipated. The desert tortoise which is a U.S. Fish and Wildlife Service federally-listed, threatened wildlife species, has historically occurred throughout the region of influence and has limited potential to occur almost anywhere within the Mojave Specific Plan area. Critical habitat for the desert tortoise has been designated in the region of influence and the FAA initiated informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act. After review of potential impacts, the FAA determined and the U.S. Fish and Wildlife concurred, that the proposed action, including the launch of Concept A vehicles (such as SpaceShipOne) or Concept B vehicles is not likely to adversely affect federally listed threatened or endangered species or critical habitat. As a protective measure for desert tortoise that may be within the Mojave Airport fence, the U.S. Fish and Wildlife Service requested that the FAA survey the runway prior to take-off and landing of suborbital vehicles. If a desert tortoise were discovered at the airport, personnel would follow appropriate U.S. Fish and Wildlife Service and California Department of Fish and Game protocols.

The breakup of the launch vehicles during a crash and subsequent recovery activities could directly impact biological resources in the Region of Influence through ground disturbance. Also, if falling debris hit specific species on the ground, those resources would likely be destroyed. However, because it is unlikely that a crash would occur, impacts to biological resources as a

result of vehicle crash would not be anticipated.

Noise impacts generated by launch vehicles at the Mojave Airport, including sonic booms, could elicit a short-term startle response in wildlife but no long-term adverse impacts would be expected. In general, noise levels would be significantly less than those produced by existing aircraft vehicles in the region, and launches would occur infrequently over the course of a year. Therefore, these short-term noise impacts would be less than significant.

Cultural Resources

No airport modifications or construction activities are currently planned to support the proposed action. Concept A and B vehicles (including SpaceShipOne) would use a designated runway at the Mojave Airport for launches and landings. The runways are routinely used for takeoffs and landings of other aircraft and no construction activities would be required. Potential impacts to cultural resources would be associated generally with the noise produced during flights and could include physical damage to buildings, structures or rock features through accident or vibration, visual or audible impacts to the setting of cultural resources, and disturbance of traditional activities, such as religious ceremonies or subsistence hunting. Impacts to cultural resources from airspace use would most likely be related to alterations in setting from visual or aural disturbance, and the extremely remote possibility of debris falling. The probability of damage to National Historic Register listed or eligible sites is small. No construction activities would occur as part of the proposed action, and no adverse effects on National Register sites would be anticipated. The FAA consulted with the California State Historic Preservation Officer to initiate informal consultation under Section 106 of the National Historic Preservation Act. The FAA determined that the proposed project would have no adverse effect on cultural resources. The California State Historic Preservation Officer concurred with the FAA's determination and consultation under Section 106 was concluded.

Geology and Soils

The breakup of the launch vehicles during a crash and subsequent recovery activities could directly impact geology. The force associated with falling debris might create craters. The specific impact to geology would depend on the force at which the debris impacts the ground. However, because the probability of a crash is extremely low, it is unlikely that debris or residual propellant would significantly impact geology.

The proposed action would have less than significant or no impact on soils. In terms of ground clouds from the combustion of propellants, Concept A vehicles (including SpaceShipOne) would have no impacts because the only emission source at the ground level would be from the carrier aircraft. However, Concept B vehicles use liquid propellants, which would create a ground cloud consisting of carbon monoxide, carbon dioxide, hydrogen, and water. The ground cloud would disperse as the vehicle moves along the runway. Additionally, Concept B launch vehicles would use a liquid propellant, which creates a ground cloud with fewer impacts to soils than caused by the burning of solid rocket propellants.

The breakup of Concept A or B vehicles (including SpaceShipOne) during a crash and subsequent recovery activities could directly impact soils. Residual propellant in the damaged or destroyed launch vehicle could be absorbed by the soils affecting soil quality in the impact area. Because the probability of a crash is extremely low, and cleanup of reportable quantities is required under the Comprehensive Environmental Response Compensation and Liability Act, it is not expected that debris or residual propellant would significantly impact soils.

Hazardous Materials and Hazardous Waste Management

For both Concept A and B vehicles (including SpaceshipOne), the primary hazardous materials used would be propellants. Propellants used for Concept A launch vehicles (including SpaceShipOne) are relatively inert and they would be stored at the Airport. For Concept B, the kerosene and/or alcohol would have similar hazardous characteristics to the jet fuel currently used at Mojave Airport. All fuels and other hazardous materials would be stored and used in compliance with the regulations applicable to their storage and use, and already in place at Mojave Airport. No adverse impacts would be anticipated from these additional hazardous materials or subsequent hazardous waste disposal.

The SpaceShipOne vehicle would be fueled by a hybrid rocket motor using liquid N_2O and solid HTPB. Jet-A fuel would be used to fuel the carrier aircraft from takeoff on the ground until reaching 15,240 meters (50,000 feet) where the rocket motor would be ignited.

To compress gaseous N_2O to liquid form, a combination of elevated pressure and reduced temperature is needed. Specially designed storage tanks would be used for storing N_2O. Scaled Composites would use a Mobile Nitrous Oxide Delivery System (MONODS).

MONODS was designed and built as a portable N_2O storage unit that could be used to fill the launch vehicle. MONODS includes a 6,435-liter (1,700-gallon) tank, generator and heating/cooling unit. The storage vessel is constructed of materials that meet the American Society of Testing and Materials specification SA–240–304 for stainless steel. It meets the American Society of Mechanical Engineers Code and is registered with the National Board of Pressure Vessels.

HTPB is a solid propellant that is manufactured and placed in a Case, Throat and Nozzle (CTN) motor offsite. The CTN would therefore arrive at the Mojave Airport fully fueled. The solid propellant is stable and non-reactive until ignited. Overall, there would be no significant Hazardous Materials and Hazardous Waste Management impacts anticipated from the launch of SpaceShipOne launch vehicles from the Mojave Airport.

Land Use

No significant impacts to land use would occur as a result of the proposed action. The Mojave Airport is a highly developed, urbanized, non-sensitive area, and habitat and nature conservation plans are not applicable to the airport. The proposed action would be to conduct horizontal launches and landings on established runways of vehicles similar in size, power, and noise level to aircraft already using the airport. Therefore, no significant change would occur in airport activities. The proposed action does not include any construction, additions, or modifications to the airport facilities that would physically divide an established community. Therefore, the proposed action would not result in a conflict with an applicable land use, habitat conservation, or natural community conservation plan.

No significant impacts to land use in the off-site Region of Influence would occur as a result of the proposed action. The Concept A and B launch vehicles (including SpaceShipOne) would use Runway 12–30, which serves large airline carrier jet aircraft and high performance military and non-military jet aircraft. This runway has a northwest-southeast orientation that routes aircraft over commercial, industrial, and resource management land uses and away from sensitive land uses in the Mojave community such as

residential areas and school areas. Because the proposed vehicles are similar in size, power, and noise level to the aircraft currently using the airport, any impacts on land uses in the Mojave community due to the proposed action would be equal to or less than the impacts of the existing activities. Noise impacts on sensitive land uses are discussed in the Noise analysis. The proposed action would not include any off-site construction or modification of existing buildings or facilities, and therefore would not physically divide any established communities. No conflicts with any applicable land use plans or habitat or nature conservation plans for the Mojave community would occur as a result of the proposed action.

Noise

Approximately 1,226 jet aircraft takeoff and land at the Mojave Airport annually. The jet engines of the Concept A carrier vehicle are similar in size and power to jet aircraft that operate at the Mojave Airport. Noise levels at the airport from the Concept A carrier vehicle would be less than or equal to noise levels produced by afterburning jet aircraft currently using the Mojave Airport. The launch vehicles would land unpowered, therefore noise levels for landing would be insignificant and were not considered further in the noise analysis. Because the Mojave Airport currently experiences high intensity noise levels of 90 dB due to military jet flights and stationary rocket testing, and because the additional high intensity noise level would be insignificant, impacts to noise levels during launches at the Mojave Airport would be insignificant.

The Mojave community currently experiences high noise levels from military jet takeoffs and landings and stationary rocket tests. Sensitive receptors in the Mojave community such as schools and residential areas already experience high intensity noise levels above 90 dBA. An additional 4.4 minutes per week of high intensity noise levels would not cause significant impacts to sensitive receptors and would not elevate the average noise level above the acceptable levels of 65 CNEL or 65 L_{dn}. (Kern County, 2003c)

The predicted overpressure for sonic booms produced by Concept A and B vehicles (including SpaceShipOne) flying at approximately 21,341 to 24,390 meters (70,000 to 80,000 feet) above mean sea level would be approximately 5.86 kilograms per square meter (1.2 pounds per square foot). Launches from the Mojave Airport would only occur during daytime hours. As a previous DoD study has shown, the noise effects of 10 daytime sonic booms at an overpressure of 4.88 kilograms per square meter (1 pound per square foot) everyday for a year would yield an outdoor accumulated noise level equal to an L_{dn} of 65 dBA. This result aids in defining the maximum daily allowance for the number of daytime sonic boom events (10 events per day) to reach the L_{dn} 65 dBA noise standard limit. This assumes the estimated sonic boom overpressure is within the same order of magnitude, 4.88 kilograms per square meters (1 pound per square foot), as those to be generated by the proposed Concept A and B vehicles.

The L_{dn} of 65 dBA is the accepted outdoor noise level related to transportation that has been adopted by the State of California and Kern County. In addition, a Community Noise Equivalent Level (CNEL) noise standard of 65 dB, applied for sensitive land uses such as residential and school areas, is also a required noise standard by the local authorities. Note the L_{dn} is similar to CNEL. Both measures are the average noise level over a 24-hour period, yet each applies a separate variation on penalties for nighttime noise levels. L_{dn} adds a 10 dB penalty for noises occurring between 10 p.m. and 7 a.m. the following morning. CNEL adds a 5 dB penalty to noises occurring between 7 p.m. and 10 p.m., and adds a 10 dB penalty to noises occurring between 10 p.m. and 7 a.m. the following morning. (Kern County, 2003d)

However, the current proposed action would occur only during daytime hours. With no nighttime decibel penalties applicable, the L_{dn} and the CNEL would be equivalent measurements. As a result, an L_{dn} of 65 dBA for 10 daytime sonic booms per day for a year would be equivalent to a CNEL of 65 dBA for the proposed conditions.

Under the proposed action, it is expected the maximum overpressures would be on the order of 4.88 kilograms per square meter (1 pound per square foot), yet operations would occur at a lower frequency number of events (but only 1.1 sonic booms per week). Therefore, the sonic boom noise impact of the proposed action is estimated to be below the accepted L_{dn} and CNEL 65 dBA noise limits given the approximate factor of sixty-four times fewer expected number of sonic boom events estimated. At present, the Mojave Airport currently experiences sonic boom noise exposure from supersonic military jets and supersonic Space Shuttle testing at Edwards AFB.

The additional noise level associated with the launches of Concept A and B vehicles would be an insignificant increase to the community. The noise levels in the Mojave community associated with sonic booms would be less than 65 dBA L_{dn} and less than 65 dBA CNEL. The entire Mojave community including sensitive receptors currently experiences sonic boom noise exposure from air- and spacecraft landing at Edwards AFB. The proposed action would not constitute a significant increase in noise level to the community.

Annoyance created by sonic booms is a function of boom intensity, number of booms per time period, attitude of the population, and the activity in which people were engaged in at the time of the boom. There is no precise relationship between the parameters. A noise study found that 10 percent of subjects exposed to 10 to 15 booms per day were annoyed at an overpressure of one pound per square foot and that this reached nearly 100 percent at three pounds per square foot. However, people may be more sensitive when exposed to numerous booms per day, while prior experience with sonic booms (such as people who live on an Air Force Base) seems to lower sensitivity. Other studies indicate that there is a wide range in estimating percent annoyed ranging from 10 percent to 70 percent at one pound per square foot and 55 percent to approximately 100 percent at three pounds per square foot.

Socioeconomic Impacts and Environmental Justice

Since no new development would be required to support the proposed action, and only existing personnel would be used to conduct launch activities, the proposed action would not induce substantial population growth in the community of Mojave. The proposed action would not be expected to displace people or decrease the population in the community of Mojave and therefore no impacts to population would be expected from the proposed action.

The proposed action would not require new construction or create new employment positions at the Mojave Airport. The proposed action would not result in any jobs being eliminated at the Mojave Airport and therefore no impacts to employment are expected from the proposed action. Any increase in the number of people accessing Mojave as a result of the proposed action would be limited to launch participants and launch spectators. These visitors would most likely spend only one day in Mojave to watch or participate in launches. It was assumed that each launch of Concept A and B launch vehicles would add three

passenger vehicles to the area and each vehicle would contain one to two people. The maximum number of flights for Concept A would be six launches per year, which would add 18 passenger vehicles to the area per year. The maximum number of flights for Concept B would be 50 flights a year, which would add 150 passenger vehicles to the area per year. Existing roads could easily handle this level of passenger traffic and therefore additional transportation infrastructure would not be required. In addition, because these visitors would only be spending a short amount of time in Mojave, they are not expected to significantly impact the local service industry. Therefore, there would be no significant socioeconomic impact to the community of Mojave from the proposed action.

Since no construction activities would be required to issue a launch site operator license to EKAD for the Mojave Airport and only existing personnel would be used to conduct launch activities, the proposed action would not have an impact on the health or environment of minority or low-income populations located at or near the airport. Noise levels from the proposed launch vehicles would be significantly less than those experienced from existing vehicles in the region, would occur infrequently over the course of a year, and already occur as part of existing activities in the region. Therefore, no impacts to environmental justice communities are expected from the proposed action.

Transportation

Under the proposed action no additional employees would be hired by the Mojave Airport or potential launch participants at the airport. Any increase in the number of automobiles accessing Mojave Airport would be limited to launch participants and launch spectators. Existing access roads could easily handle an increase in passenger traffic without a change in level of service designation of a significant change in the volume to capacity ratio. The proposed action would not result in inadequate emergency access or parking capacity at the Mojave Airport or within the Mojave community. The proposed action would not conflict with adopted plans, policies, or programs supporting alternative transportation.

Under the proposed action, additional propellants would be delivered to the Mojave Airport to support the flights of the proposed launch vehicles.

Propellants to be delivered for the SpaceShipOne vehicle would include N_2O and HTPB for the launch vehicle and Jet-A fuel for the carrier vehicle. Approximately 1,295 kilograms (2,855 pounds) of N_2O are required per launch. Each delivery truck would transport 11,340 kilograms (25,000 pounds) of N_2O to the Mojave Airport. Under the proposed flight schedule, the maximum number of launches would be six per year; therefore, one delivery truck per year would supply the required N_2O. Approximately 2,903 kilograms (6,400 pounds) of Jet-A fuel are required per launch. Each delivery truck would transport 28,122 kilograms (62,000 pounds) of Jet-A fuel to the Mojave Airport; therefore one truck a year would be needed to supply the required Jet-A fuel. One truck per flight would be needed to bring the motor containing the solid propellant, HTPB, to the Mojave Airport; therefore six trucks per year would be needed to deliver the required HTPB. A maximum of eight delivery trucks would be required to supply propellants for the SpaceShipOne launch vehicles per year. The Mojave Airport estimates that there are currently 264 propellant truck deliveries annually. The Mojave Airport is located at the crossroads of major north-south and east-west roadways. The small number of additional passenger vehicles and delivery trucks anticipated as part of the proposed action would not increase traffic congestion or cause a decline in the level of service.

Visual Resources

The design of the proposed launch vehicles would resemble traditional airplanes in flight, and the visual landscape already includes aircraft in flight. The proposed action would not create a new source of substantial light or glare to adversely affect day or nighttime views in the area, so the visual dominance would be "Not Noticeable." Both proposed launch vehicle concepts would leave visual contrails, but they would be similar in visual impact to contrails from existing operations. Because this area is already used for aircraft takeoffs and landings, the visual sensitivity is low. The proposed action would not substantially degrade the existing visual character or quality of the site and its surroundings and would have no adverse effect on a scenic vista or scenic resources, as there are none in the area.

Water Resources

Because no construction or expansion to the existing facilities would occur, the proposed action would not cause impacts to existing drainage patterns that would result in increased erosion, siltation, or on-site or off-site flooding. The proposed action would not involve the generation of additional storm water or of additional sources of pollutants that could be washed away during storm events. The existing storm water system and permit would be adequate for the proposed action. The proposed action would not make any changes to the amount of impermeable surface area and would therefore have no impact on the existing off-site storm water system. Therefore, the capacity of the current storm water system would be adequate to accommodate the proposed action. Because no construction or expansion to the existing facilities would occur, the proposed action would not substantially deplete ground water supplies either on- or off-site or interfere with ground water recharge such that there would be a net deficit in aquifer volume or a lowering of the local ground water table. In the event of a catastrophic accident unburned propellant could impact ground water. However, the small size of the proposed vehicles and the low probability of a catastrophic event would make the impacts insignificant.

In the event of a catastrophic accident, debris and wreckage could impact drainage patterns or storm water flows. But, the small size of the proposed vehicles and the low probability of a catastrophic event would make the impacts insignificant. Extensive emergency response and clean-up procedures would further reduce the magnitude and duration of any impacts.

Cumulative Impacts

The proposed action would not exceed de minimis levels for criteria pollutants and the percent of the air quality control area's emissions inventory for any criteria pollutant. Total CO_2 emissions from all sources in the U.S. were 5,159 million metric tons (5,687 million tons) in 1994. The proposed action would account for an increase of only a fraction (less than 0.000002%) of these CO_2 emissions. Consequently, the total expected CO_2 emissions from the proposed action would be insignificant. There would be no emissions that directly affect ozone depletion. No significant cumulative impacts to air quality are expected.

Because of the volume of air traffic that uses this area already and the structured scheduling procedures in place for joint-use of the R–2508 Complex, the proposed action would have no significant cumulative effects on airspace.

In the EA for the Orbital Reentry Corridor for Generic Unmanned Lifting Entry Vehicle Landing at Edwards AFB, the USAF considered up to 12 flights per year. Currently an average of two

military jet aircraft take off and/or land at the Mojave Airport per day. These military aircraft can produce sonic booms. Even in the worst case scenario, i.e., one launch from the Mojave Airport, one launch of the proposed Unmanned Lifting Entry Vehicle from Edwards AFB, and two jet aircraft take offs or landings from the Mojave Airport, there would not be more than 10 sonic booms generated per day in the Region of Influence. Therefore, there would be no significant cumulative impacts to noise from the proposed action.

No significant cumulative impacts to biological, cultural, geologic, mineral, visual and aesthetic, or water resources would occur as a result of the proposed action. No significant cumulative impacts would result from hazardous materials or hazardous waste used or produced as a result of the proposed action. No significant cumulative impacts to land use, socioeconomics, environmental justice, or transportation would occur as a result of the proposed action.

Detailed analyses of safety and related issues would be addressed in the FAA's Mission and Safety Review prior to issuing a launch license. However, safety and health analyses of operations that have the potential for environmental impact were considered in the EA and were determined to have no significant cumulative impacts on the environment.

Although the proposed action would support and facilitate limited growth, it would not induce growth. Additionally, there would be no specific future development activities currently known that would be dependent on the proposed action. Therefore no significant cumulative secondary impacts are expected to result from the proposed action.

No Action Alternative

Under the No Action Alternative, the FAA would not issue a launch site operator license to the EKAD for the operation of a launch site at the Mojave Airport or issue a launch license to Scaled Composites for up to six launches of SpaceShipOne from the Mojave Airport. Scaled Composites could continue to conduct aviation-related activities that do not require a launch license.

The predicted environmental effects of the Proposed Action would not occur. The existing on- and off-site conditions at the Mojave Airport would remain unchanged.

Determination

An analysis of the proposed action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives set forth in Section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA. Therefore, an EIS for the proposed action is not required.

Issued in Washington, DC on February 18, 2004.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 04–4176 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of projects proposed at San Antonio International Airport.

FOR FURTHER INFORMATION CONTACT: *Responsible Official:* Mr. Paul Blackford, Environmental Specialist, Federal Aviation Administration, Southwest Region, Texas Airports Development Office, 2601 Meacham Blvd., Ft. Worth, Texas 76137–4298. Telephone (817) 222–5607.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare and consider an EIS for implementation of proposed projects at San Antonio International Airport. Major development projects to be assessed in the EIS include a 1,500 ft. extension of Runway 3/21 to a runway length of approximately 9,000 ft; the reconstruction and upgrade of Runway 12L/30R from general aviation to aircarrier dimensions of approximately 8,500 ft. by 150 ft. as well as associated taxiways, the installation of an instrument landing system, and related land acquisition; and other related development. These projects are proposed to improve safety, efficiency, and accommodate growing aviation demand at the Airport. These actions were identified in the San Antonio International Airport Master Plan Study.

The EIS will also consider the potential uses of approximately 180 acres of Airport owned land. The 180 acres is located in the far north portion of the Airport, north of Starcrest and bound by Wetmore Road and Wurzbach Parkway, which is not contiguous with the Airport. Potential land uses include warehousing, large commercial or similar uses.

The EIS will evaluate the feasibility of certain air traffic or procedural actions recommended in the Airport's Federal Aviation Regulation (FAR) part 150 Noise Compatibility Program Update including: a Preferential Runway Use Program for Runways 12L/30R, 12R/30L and 3/21; Runway 12R/30L and Runway 3/21 intersection removal that would be offset by an approximately 400 ft. extension to the northwest; the establishment of a 15° right turn on departure from Runway 3; and the establishment of a departure corridor for Runway 21 over Highway 281 for southbound aircraft. These procedural actions will be evaluated as part of the EIS for feasibility regarding effects on safety, efficiency, and capacity.

To ensure that the full range of issues related to the proposed projects are addressed and that all significant issues are identified, the Federal Aviation Administration intends to consult and coordinate with Federal, State, and local agencies having jurisdiction by law or specific expertise with respect to any environmental impacts associated with the proposed projects. In order to notify the general public of the scoping process, a notice will be placed in a newspaper having general circulation in the project area describing the proposed projects and their purpose. The newspaper notice will inform the public that scoping meetings will be held to gain their input concerning the proposed projects at the following locations:

- March 23, 2004, from 6:30 to 8:30 p.m., Doubletree Hotel (to be held in Salon I and II), 37 NE. Loop 410, San Antonio, Texas 78216;
- March 24, 2004, from 6:30 to 8:30 p.m., Northern Hills Country Club, 13202 Scarsdale, San Antonio, Texas 78217.

Federal, State and local agencies will be notified of the Agency meeting via letter. The Agency scoping meeting will

be held at 10 a.m., March 23, 2004, at the Airport Conference room A, Terminal 1, Mezzanine Level, at San Antonio International Airport.

Issued in Ft. Worth, Texas on February 12, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–4292 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cache County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Cache County, Utah.

FOR FURTHER INFORMATION CONTACT: Jeff Berna, FHWA, Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0182 or Kelly Barrett, Project Manager, Utah Department of Transportation, Region One Office, 169 Wall Street, Ogden, UT 84112, Telephone: (801) 620–1684.

SUPPLEMENTARY INFORMATION: FHWA, in cooperation with the Utah Department of Transportation (UDOT) will prepare an Environmental Impact Statement (EIS) to address the proposed construction of an approximately 3-mile segment of new transportation corridor from 1400 North in North Logan City to 3700 North in Hyde Park City, between U.S. Highway 91 and 400 East in Cache County, Utah. The Cache Metropolitan Planning Organization in its June 2000 long range Transportation Master Plan identified this corridor as an important future transportation system for the Cache Valley. The EIS will evaluate no-build and build alternatives to address the need for a proposed action to provide for existing and projected traffic demand along this corridor. Reasonable alternatives within the study area will be fully considered in compliance with National Environmental Policy Act regulations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in this project. Public scoping meetings will be held in spring 2004 in the project area. Additionally, a public hearing will be held in accordance with FHWA regulations. Public notice will be given of the time and place of the scoping meetings and hearing. The scoping process will be open to determine all of the issues. The draft environmental document will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 22, 2004.

Jeffrey Berna,

Environmental Specialist, Salt Lake City, Utah.

[FR Doc. 04–4260 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9779; Notice 2]

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget ("OMB"). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before April 26, 2004.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by addressing its OMB Clearance Number. You may also submit your comments to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For questions contact Michael Kido in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366–5263. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Criminal Penalty Safe Harbor Provision

Type of Request—Extension of clearance.

OMB Clearance Number—2127–0609.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Each person seeking safe harbor protection from criminal penalties under 49 U.S.C. 30170 related to an improper report or failure to report is required to submit the following information to NHTSA: (1) A signed and dated document that identifies (a) each previous improper report and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought and (b) the specific predicate under which the improper or omitted report should have been provided; and (2) the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted to NHTSA or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA. *See* 49 U.S.C. 30170(a)(2) and 49 CFR 578.7. *See also,* 66 FR 38380 (July 24, 2001) (safe harbor final rule) and 65 FR 81414 (Dec. 26, 2000) (safe harbor interim final rule).

Description of the Need for the Information and Use of the Information—This information collection was mandated by Section 5 of the Transportation Recall Enhancement, Accountability and Documentation Act, codified at 49 U.S.C. 30170(a)(2). The information collected will provide NHTSA with information the agency should have received previously and will also promptly provide the agency with correct information to do its analyses, such as, for example, conducting tests or drawing conclusions about possible safety-related defects. NHTSA anticipates using this information to help it to accomplish its statutory assignment of identifying safety-related defects in motor vehicles and motor vehicle equipment and, when appropriate, seeking safety recalls.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to any person who seeks a "safe harbor" from potential criminal liability for knowingly and willfully acting with the specific intention of misleading the Secretary by an act or omission that violates section 1001 of title 18 with respect to the reporting requirements of 49 U.S.C. 30166, regarding a safety-related defect in motor vehicles or motor vehicle equipment that caused death or serious bodily injury to an individual. Thus, the collection of information applies to the manufacturers, and any officers or employees thereof, who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

We believe that there will be very few criminal prosecutions under section 30170, given its elements. In the past three years since the safe harbor related rule has been in place, the agency has not received any reports. Accordingly, it is not likely to be a substantial motivating force for a submission of a proper report. We estimate that no more than one such person a year would invoke this new collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting from the Collection of Information—2 hours.

As stated before, we estimate that no more than one person a year would be subject to this new collection of information. Incrementally, we estimate that on average it will take no longer than two hours for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of two hours.

Since nothing in the rule requires those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.50.

Issued on: February 20, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–4278 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 29, 2004.

Address Comments To: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://www.dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 20, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13357–N		Indiana Michigan Power Company, Buchanan, MI.	49 CFR 173.403; 173.427	To authorize the transportation in commerce of four steam generators containing Class 7 radioactive material. (modes 1, 2).
13401–N		Northern States Power Company dba XCEL Energy Services, Inc., Welch, MN.	49 CFR 173.403; 173.427	To authorize the transportation in commerce of two steam generators containing Class 7 radioactive material.
13423–N		E.I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.40(e)	To authorize the transportation in commerce of Division 6.1 toxic liquid in DOT-specification cylinders that have been manifolded or interconnected. (mode 1).
13424–N		Air Products and Chemicals, Inc., St. Gabriel, LA.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected while standing without the physical presence of an unloader. (mode 1).
13425–N		MDS Nordion, Ottawa, ON.	49 CFR 173.471	To authorize the transportation in commerce of Class 7 hazardous materials for disposal contained in specially designed equipment. (mode 1).
13426–N		Capintec, Inc., Pittsburgh, PA.	49 CFR.173.302; 175.3	To authorize the transportation in commerce of non-DOT specification containers for use in transporting Argon, Division 2.2. (modes 1, 4, 5).
13441–N		Eastman Kodak Company HSE—Hazmat Transportation Services, Rochester, NY.	49 CFR 173.6(a)(1)(ii), 173.6(d).	To authorize the transportation in commerce of limited quantities of waste materials in amounts that exceed the quantity limitations specified under the material of trade exception as defined in 49 CFR. (mode 1).
13443–N		Koch Materials Company, Wichita, KS.	49 CFR 173.24(c); 173.202; 173.203; 177.834(h); 173.28(a) and (b).	To authorize the transportation in commerce of alternative shipping containers to be used for non-bulk quantities of chemical additives used in the manufacture of asphalt products. (mode 1).
13444–N		Halliburton Energy Services, Inc., Duncan, OK.	49 CFR 173.201; 173.302; 173.304; 178.35(e); 178.36.	To authorize the manufacture, mark, sale and use of a non-DOT specification cylinder for the transportation of well site oil/natural gas samples. (modes 1, 2, 3, 4).
13445–N		U.S. Department of Energy, Richland, WA.	49 CFR 173.211; 173.244	To authorize the one-time one-way transportation in commerce of a specially designed device containing Sodium, Division 4.3 for recycling purposes. (mode 1).

[FR Doc. 04–4282 Filed 2–25–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (40 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before March 12, 2004.

Address Comments To: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 20, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Modification of exemption	Nature of exemption thereof
6530–M	.....	Air Products and Chemicals, Inc., Allentown, PA.	6530	To modify the exemption to authorize the transportation of a Division 2.2 material in a DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinder.
7946–M	.....	Imaging & Sensing Technology Corporation, Horseheads, NY.	7946	To modify the exemption to authorize a volume increase beyond 45 cubic inches with a corresponding decrease in pressure (charge) of the non-DOT specification, non-refillable packaging described as a radiation detector assembly.
7954–M	.....	Air Products and Chemicals, Inc., Allentown, PA.	7954	To modify the exemption to authorize an update of the pressure relief device, manifolding and pressure requirements for the transportation of Division 2.2 and 2.3 materials in DOT Specification cylinders.
8228–M	.....	U.S. Department of Justice (FBI), Quantico, VA.	8228	To modify the exemption to authorize the transportation of small quantities of unapproved explosive substances or articles to local government laboratories.
11054–M	.....	Welker Engineering Company, Sugar Land, TX.	11054	To modify the exemption to increase the rated working pressure from 1800psi to 2160psi and the hydrostatic test pressure to 3600psi for the CP–5 non-DOT specification cylinder.
11329–M	.....	DEGESCH AMERICA, INC., Weyers Cave, VA.	11329	To modify the exemption to authorize two additional outer packagings for the transportation of Division 4.3 and 6.1 materials.
11624–M	.....	Envirotech Systems, Inc., Lynnwood, WA.	11624	To modify the exemption to authorize the transportation of waste materials from conditionally exempt small quantity generators and categorically exempt household hazardous waste generators that do not meet the definition of "hazardous waste".
12613–M	RSPA–01–8702	NOVA Chemicals Corporation, Red Deer, AB.	12613	To modify the exemption to authorize the transportation of an additional Class 3 material in a DOT Specification 112J340W tank car.
12988–M	RSPA–02–12215.	Air Products and Chemicals, Inc., Allentown, PA.	12988	To modify the exemption to authorize a design change of the non-DOT specification cynlinder.
12938–M	RSPA–02–11912.	Northrop Grumman Space Technology (Former Grantee: TRW, Inc.), Redondo Beach, CA.	12938	To modify the exemption to authorize the transportation of a Division 2.1 and additional Division 2.2 material in non-DOT specification containers and DOT Specification cylinders installed in the EOS–PM (AQUA) Satellite or attached to the EOS Satellite Transporter.
13207–M	RSPA–03–15068.	BEI Hawaii, Honolulu, HI	13207	To modify the exemption to authorize the use of two additional IM 101 tanks for the transportation of a Class 8 material.
13246–M	RSPA–03–15625.	McLane Company, Inc., Temple, TX.	13246	To modify the exemption to authorize the use of additional plastic outer packagings for the transportation of a Division 2.1 material.

[FR Doc. 04–4283 Filed 2–25–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) Invitlng Applications for the FY 2004 Funding Round of the Financial Assistance Component of the Community Development Financial Institutions Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CDFA) Number: 21.020.

Dates: Applications must be received by 5 p.m. ET on April 28, 2004 (see Section IV.D), and must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA.

Executive Summary: This NOFA is issued in connection with the FY 2004 funding round of the Financial Assistance (FA) Component of the Community Development Financial Institutions (CDFI) Program. Through the FA Component, the Community Development Financial Institutions Fund (the Fund) provides FA awards and technical assistance (TA) grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development purposes. Through this NOFA, the Fund makes funding available through three categories: (i) Category I/Small and Emerging CDFI Assistance (SECA); (ii) Category II/Core & Sustainable CDFIs Assistance (Core); and (iii) Category III/ Financial Leverage and Market Expansion Assistance (FLOW).

I. Funding Opportunity Description

Through this NOFA, the Fund intends to target its resources by providing (i) FA awards to CDFIs that will use FA award proceeds to achieve the Programmatic Priorities, in the rank order set forth below, and (ii) TA grants to build awardee capacity to serve Target Markets.

A. *Programmatic Priorities:* Please note that Programmatic Priorities 1–4 are listed in order of priority for awards; the related activities are not in listed in priority order. Applicants may apply and be considered for funding for more than one type of Programmatic Priority and activity.

Programmatic priority	Activities
Priority 1	• Affordable Housing in Housing Hot Zones and/or for Other Targeted Populations. • Economic Development (other than Community Organization Support) in Economic Development Hot Zones and/or for Other Targeted Populations. • Community Development Financial Services in Economic Development Hot Zones and/or Housing Hot Zones.
Priority 2	• Affordable Housing in Economic Development Hot Zones and/or other Investment Areas, and/or for Low-Income Targeted Populations. • Economic Development (other than Community Organization Support) in other Investment Areas and/or for Low-Income Targeted Populations. • Community Development Financial Services for Low-Income Targeted Populations and/or Other Targeted Populations.
Priority 3	• Community Development Financial Services in Investment Areas (other than Hot Zones). • Community Organization Support.
Priority 4	• Other activities as requested by the applicant and deemed appropriate by the Fund.

B. *CDFI Program Regulations:* The interim rule governing the CDFI Program can be found at 12 CFR part 1805 and provides guidance on evaluation criteria and other requirements of the CDFI Program. The Fund expects to issue a revised interim rule in the very near future. The Fund encourages applicants to review the interim rule and its revision, when published.

C. *Definitions:* All defined terms in this NOFA shall have the meanings ascribed to them in the interim rule. For purposes of this NOFA, certain terms in the Programmatic Priority chart above are defined as following:

(i) *Affordable Housing* includes activities that: (A) Promote the supply of housing through the provision of pre-development financing, construction and rehabilitation financing, and related Development Services, and/or (B) increase homeownership through the provision of first mortgage financing, subordinated mortgages (for home purchase and rehabilitation), and related Development Services.

(ii) *Community Development Financial Services* include Financial Services, financial education and other Development Services, appropriate consumer loans, and re-financing of predatory loans.

(iii) *Community Facilities:* see 12 CFR 1805.104(j).

(iv) *Community Organization Support* includes: Financial Products (see 12 CFR 1805.104(t)) related to the acquisition, construction, development, or rehabilitation of Community Facilities; business loans to non-profit organizations; and related Development Services, to non-profit organizations.

(v) *Development Services*: see 12 CFR 1805.104(r).

(vi) *Economic Development* includes: Activities that support the creation and retention of jobs and the growth of businesses through (i) loans, Equity Investments and other similar financing to for-profit small businesses, microenterprises, and commercial real estate other than Community Facilities, (ii) related Development Services, and (iii) Community Organization Support.

(vii) *Financial Services: see* 12 CFR 1805.104(u).

(viii) *Hot Zones* (and the Fund's methodology for Hot Zone designation) are subsets of Investment Areas and are identified at the Fund's Web site at *http://www.cdfifundhelp.gov*. For purposes of this NOFA, Hot Zones include *Economic Development Hot Zones, Housing Hot Zones,* and a combination thereof.

(ix) *Investment Areas: see* 12 CFR 1805.104(cc).

(x) *Low-Income Targeted Populations: see* 12 CFR 1805.104(dd) and (ii).

(xi) *Other Targeted Populations* include identifiable groups of individuals in the applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services (for further description, see Eligibility section, below).

II. Award Information

A. *Award Information:* Subject to funding availability, the Fund expects that it may award approximately $45 million in appropriated funds under this NOFA. The Fund reserves the right to award in excess of $45 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates making awards (i) up to and including $300,000 per award for Category I/SECA CDFIs; (ii) up to and including $1,000,000 per award for Category II/Core CDFIs; and (iii) up to and including $2,000,000 per award for Category III/FLOW CDFIs. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs.

B. *Types of Awards:* An applicant may submit an application either for FA only, or for FA and a TA grant, under this NOFA. While the FA Component offers TA grants in conjunction with FA awards, entities seeking TA grants only should apply for funds through the Technical Assistance Component of the CDFI Program. The FY 2003 NOFA for the Technical Assistance Component was published in the **Federal Register** on February 4, 2003 (68 FR 5735).

1. *FA Awards:* (a) *Types of FA awards:* FA may be provided by the Fund through an equity investment (including, in the case of certain Insured Credit Unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion: (i) To provide FA in a form and amount other than that which is requested by an applicant; (ii) to offer TA for specified purposes, even if the applicant has not requested TA; and/or (iii) to condition the awarding of FA on the applicant agreeing to use TA for specified purposes.

(b) For any Category I/SECA applicant that does not meet certain minimum evaluation criteria and thus is ineligible for a FA award, the Fund may offer, in its sole discretion, the opportunity for the applicant to submit certain additional documentation demonstrating the need for a TA-only award from the TA Component, which the Fund may provide in amounts and for uses the Fund deems appropriate, subject to funding availability.

2. *TA Grants:* TA awards are in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an

applicant. Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their capacity to provide greater community development impact. Capacity enhancements may address a range of activities including, but not limited to, improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, and tools that allow the applicant to assess the impact of its activities in its community.

Eligible types of TA grant uses include, but are not limited to, the following: (i) Acquiring consulting services; (ii) paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA; (iii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; and (iv) acquiring training for staff or management.

The Fund will not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that: (i) The staff salary relates directly to building the applicant's capacity to serve its target market; (ii) the proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its Comprehensive Business Plan; (iii) the proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and (iv) the staff person assigned to the proposed task has the competence to successfully complete the activity. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov*.

C. *Notice of Award; Assistance Agreement:* Each awardee under this NOFA must sign a Notice of Award (for further information, see Section VI.A, below) and an Assistance Agreement (see Section VI.B, below) prior to disbursement by the Fund of award proceeds. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award.

III. Eligibility Information

A. *Eligible Applicants:* The interim rule specifies the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOFA:

1. *Applicant Categories:* The FA Component is designed to address the capitalization and liquidity needs of three types of CDFIs:

Applicant category	Criteria	What can it apply for?
Category I: Small and Emerging CDFIs Assistance (SECA).	A Category I/SECA applicant is a CDFI that: Has total assets as of December 31, 2003 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $100 million • Insured Credit Unions: up to $10 million • Venture capital funds: up to $10 million • Other CDFIs: up to $5 million OR Did not begin operations prior to April 15, 2001 AND Prior to the date of application under this NOFA, has not been selected to receive any award(s) under the CDFI Program that total in the aggregate an amount greater than $300,000	A Category I/SECA applicant may request up to and including $300,000 in FA or FA/TA.
Category II: Core & Sustainable CDFIs Assistance (Core).	A Category II/Core applicant is a CDFI that has total assets as of December 31, 2003 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $500 million • Insured Credit Unions: up to $25 million • Other CDFIs: up to $25 million	A Category II/Core applicant may request up to and including $1 million in FA or FA/TA.
Category III: Financial Leverage and Market Expansion Assistance (FLOW).	A Category III/FLOW applicant is a CDFI that has total assets as of December 31, 2003 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: $500 million and greater • Insured Credit Unions: $25 million and greater • Other CDFIs: $25 million and greater	A Category III/FLOW applicant may request up to and including $2 million in FA or FA/TA.

An applicant of any size or age can apply for a higher amount of funding by applying in a higher-numbered Category. Applicants will be evaluated and ranked with all other applicants; however, in an effort to achieve an awardee pool that reflects a blend of emerging and mature CDFIs of varying asset sizes, the Fund will evaluate

Category I/SECA applicants using more flexible review standards.

2. *CDFI Certification:* For purposes of NOFA, an application for an award will not be considered unless:

(a) The applicant is already certified as a CDFI, with a certification expiration date on or after December 31, 2004. Please note: The Fund provided a number of CDFIs with certifications expiring in 2003 and 2004 with notification that their certification had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement; or

(b) The Fund receives from an applicant a complete CDFI certification application no later than March 31, 2004, evidencing that the applicant can be certified as a CDFI. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form.

3. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) Any entity that has received a Notice of Award from the Fund for a prior funding round of the CDFI Program, Native American CDFI Technical Assistance (NACTA) Program, or Native American CDFI Development (NACD) Program funding round, but that has not submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see CDFI Certification section, above).

(b) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the three-year period extends back from the date of obligation under the NOFA. The Fund will deem the date of the Fund's obligation of assistance to an organization as evidenced by the date that the Fund has signed the Notice of Award issued to an awardee.

(c) The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program if the applicant is not current on its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program and is not current on its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the application deadline of this NOFA.

(d) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program if the applicant has received (or receives at any time prior to entering into an assistance agreement under this NOFA) written notification from the Fund that it is in default of a previously executed assistance agreement(s) and/or it has been barred from applying to the Fund for this funding round. Additionally, prior awardees whose awards terminated in default status during the period from October 1, 2002 through September 30, 2003, will be found to be ineligible under this NOFA. Prior awardees whose awards terminated in default status prior October 1, 2002 may be eligible under this NOFA if other eligibility requirements are met. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, has received (or receives at any time prior to entering into an assistance agreement under this NOFA) written notification from the Fund that it is in default of a previously executed assistance agreement(s) and/or it has been barred from applying to the Fund for this funding round, and/or has an award(s) that terminated in default status during the period from October 1, 2002 through September 30, 2003.

(e) The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program if the applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. For the purposes of this section, "undisbursed funds" is defined as: (i) In the case of prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the date that the Fund signed an award agreement with the awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five percent of the total prior award(s) that remains undisbursed more than two (2) years after the effective date of an assistance agreement with the Fund. In the case where another entity Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the applicant and its affiliates when calculating the amount of undisbursed funds.

(f) Accordingly, applicants that are prior awardees under any Fund program are advised to: (i) Comply with requirements specified in award and/or assistance agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports, compliance or disbursement questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through April 26, 2004 (2 days before the application deadline). The Fund will not respond to applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. on April 26, 2004 until after the funding application deadline of April 28, 2004.

4. *Eligibility Appeals.* Any applicant that is found to be ineligible for funding through this NOFA on the grounds of late reports or undisbursed balances, and that believes that such factual determination was made in error, may appeal said decision by notifying the Fund's Grants Management and Compliance Manager in writing or by e-mail (at *appeals@cdfi.treas.gov*, Attention: GMC Manager). Such appeals must be received by the Fund within five business days of the date of the declination letter and must provide

documented evidence to contradict the Fund's finding. Only one such appeal per applicant may be made.

5. *Limitation on FA Awards:* An applicant may receive only one FA award through either the FA Component or the Native American CDFI Assistance (NACA) Program. A FA Component applicant, its subsidiaries or affiliates also may apply for and receive: (i) A tax credit allocation through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for FA Component awards are different from those activities for which the applicant receives a NMTC Program allocation; (ii) an award through the BEA Program (subject to certain limitations; refer to the revised interim rule at 12 CFR 1805.102); and (iii) an award through the TA Component of the CDFI Program, the NACTA Program and/or the NACD Program, but only to the extent that the activities approved for a FA award are different from those for which the applicant receives a TA, NACTA and/or NACD award.

6. *Other Targeted Populations:* Other Targeted Populations are defined as identifiable groups of individuals in the applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, and Native Hawaiians or Other Pacific Islanders residing in Hawaii or other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. Additionally, the Fund recognizes that there may be other such groups for which there is strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. Such groups may be identified, and evidence of such lack of access may be provided, in the Market Need section of the application associated with this NOFA, and the application for CDFI certification (if not identified in the Target Market of a currently certified CDFI).

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as "Haitian" or "Negro" can be used in addition to "Black or African American");

(c) Hispanic or Latino: A person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term "Spanish origin" can be used in addition to "Hispanic or Latino"); and

(d) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

For further detail, please visit the Fund's Web site at *http://www.cdfifund.gov*, under Certification/Supplemental Information.

B. *Matching Funds:* 1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA provided by the Fund (for example, if an applicant seeks a FA grant from the Fund, the applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an applicant as matching funds for a prior award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an applicant seeks to use as matching funds monies received from an organization that was a prior awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund, that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. An applicant using matching funds from an affiliated entity must be able to demonstrate that the affiliated entity received funds in the same amount and in the same form from an eligible, non-affiliated source within the eligible matching funds window, described below.

2. *Matching Funds Requirements Per Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for FA funding any applicant that does not demonstrate any matching funds committed or in-hand as of the application deadline under this NOFA. Specifically, FA applicants must meet the following matching funds requirements:

(a) *Category I/SECA applicants:* The Fund expects Category I/SECA applicants to demonstrate no less than 30 percent of matching funds requested as in-hand or firmly committed as of the application deadline. Matching funds in-hand (received) or firm commitments for matching funds made, on or after January 1, 2002, and on or before April 30, 2005, will be considered when determining matching funds eligibility. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified applicant(s), if an applicant fails to obtain in-hand the required matching funds by April 30, 2005 (with required documentation of such receipt received by the Fund not later than May 13, 2005), or to grant an extension of such matching funds deadline for specific applicants selected to receive FA, if the Fund deems it appropriate. For any applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the applicant's ability to raise the remaining matching funds by April 30, 2005.

(b) *Category II/Core and Category III/FLOW applicants:* The Fund expects that FA award amounts will not exceed 100 percent of matching funds demonstrated in the application as in-hand or firmly committed as of the application deadline. Matching funds in-hand (received) or firm commitments for matching funds made, on or after January 1, 2002, and on or before April 30, 2005, will be considered when determining matching funds eligibility. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified applicant(s), if an applicant fails to obtain in-hand the required matching funds by April 30, 2005 (with required documentation of such receipt received by the Fund not later than May 13, 2005), or to grant an extension of such matching funds deadline for specific applicants selected

to receive FA, if the Fund deems it appropriate.

3. For purposes of this NOFA, "matching funds in-hand" means that the applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; "firm commitment for matching funds" means that the applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the applicant and the applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment.

4. Please note that the revised interim rule allows an insured credit union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the applicant must increase its member and/ or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by April 30, 2005.

IV. Application and Submission Information

A. *Address to Request Application Package:* Applicants may submit applications under this NOFA either electronically or in paper form. Shortly following the publication of this NOFA, the Fund will make available the FY 2004 electronic application on its Web site at *http://www.cdfifund.gov*. Paper applications may be obtained through the Fund in the manner described in Section IV.C.2, below.

B. *Content Application Submission:* Detailed application content requirements are found in the application related to this NOFA. Applicants must submit all materials described in and required by the application. Electronic applications must be submitted solely by using the format made available at the Fund's Web site. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application. Please note that, pursuant to OMB guidance (68 FR 38402), each applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service. Incomplete applications will be rejected and returned to the sender.

C. *Form of Application Submission:* Applicants may submit applications under this NOFA either electronically or in paper form. In order to expedite application review, the Fund expects applicants to submit applications electronically (via an Internet-based application) in accordance with the instructions provided on the Fund's Web site. Submission of an electronic application will facilitate the processing and review of applications and the selection of awardees. Applications sent by facsimile or by e-mail will not be accepted.

1. *Electronic Applications:* Electronic applications must be submitted solely by using the format made available at the Fund's Web site. Applicants need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher and at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

2. *Paper Applications:* If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application and the request must be received by the Fund by March 31, 2004. The request must contain the applicant's name; the name and phone number of a contact person; a mailing address (a street address for courier or overnight service deliveries); and an explanation of why the applicant cannot complete the electronic application. The request for a paper application should be directed to the Fund's Program Operations Manager and must be sent by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–6453.

D. *Application Submission Dates and Times:* 1. *Application Deadlines:* The deadline for receipt of applications is 5 p.m. ET on April 28, 2004. Applications and other required documents and other attachments received after these dates and times will be rejected and returned to the sender. Please note that the document submission deadlines in this NOFA and/or the funding application are strictly enforced. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the U.S. mail, couriers or overnight delivery services.

a. *Paper applications* must be received in their entirety by this time and date, including an original signature page, a letter or other documentation from the Internal Revenue Service confirming the applicant's Employer Identification Number (EIN), and all other required paper attachments.

b. *Electronic applications* must be received by this date and time. In addition, applicants that submit electronic applications must separately (by mail or other courier/delivery service) submit an original signature page, a letter or other documentation from the Internal Revenue Service confirming the applicant's Employer Identification Number (EIN), and all other required paper attachments not later than 5 p.m. ET on May 5, 2004. See application instructions, provided in the electronic application, for further detail. Applications and other required documents and other attachments received after these dates and times will be rejected and returned to the sender.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of FA award proceeds, please see the interim rule, 12 CFR 1805.301. Please see Section I.A, above, for the Programmatic Priorities of this NOFA.

G. *Other Submission Requirements:*

1. *Addresses:* Paper applications must be sent to: CDFI Fund Grants Management and Compliance Manager, FA Component, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–5450. Applications and attachments will not be accepted at the Fund's offices in Washington, DC. Applications and attachments received in the Fund's offices will be rejected and returned to the sender. Electronic applications must be submitted solely by using the Fund's website and must be sent in accordance with the submission instructions provided in the electronic application form.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application, assigning points and numeric scores with respect to the following three criteria categories:

1. *Market Need and Community Development Performance* (comprising 50 percent of possible points), including an evaluation of:

(a) *Market need:* the applicant's understanding of its market context and its current and prospective customers, the extent of economic distress within the designated Investment Area(s) (including Hot Zones) or the extent of need within the designated Targeted Population(s), the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the applicant's products and services;

(b) *Programmatic Priorities:* the extent to which the applicant demonstrates that it will target its activities to the Fund's Programmatic Priorities. Pursuant to the ranking of Programmatic Priorities, highly qualified applicants, meaning those with passing scores in the other sections of the application, that propose to conduct Priority 1 activities, will receive higher scores in the Market Need and Community Development Performance section than comparable applicants that propose to conduct Priority 2 activities; those that propose to conduct Priority 2 activities will receive higher scores than those that propose to conduct Priority 3 activities; and those that propose to conduct Priority 3 activities will receive higher scores than those that propose to conduct Priority 4 activities;

(c) *Community development performance/impact:* (i) The applicant's track record and the likelihood of its projections for community development impact, including the extent to which the applicant will concentrate its activities on serving its Target Market, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market (including achieving the Fund's Programmatic Priorities); (ii) product design and strategy, including an assessment of the applicant's products and services, marketing and outreach efforts, and delivery strategy (including the applicant's track record in community development and serving the target market); (iii) the extent to which the applicant will provide products that meet key community development needs (such as low-down-payment mortgage products for Low-Income homebuyers and provision of financial services to individuals previously lacking such services); (iv) likely effectiveness of the proposed use of Fund dollars; and (v) the degree to which the applicant's strategy is integral to Federal community development initiatives (for example, Empowerment Zones) particularly targeted to benefit Low-Income people or underserved communities.

(d) *Additional considerations:*

(i) Category III/FLOW applicants will be evaluated on their plans to leverage greater private sector resources directly or indirectly in support of their lending and investing activities (such as through funding a loan loss reserve or credit enhancement), or into their Target Markets, or develop and effectively provide innovative financial products and services that address the capital needs of markets that are particularly underserved by traditional financial services institutions.

(ii) In the case of an applicant that has previously received funding from the Fund through the BEA Program, CDFI Program, the NACD Program or the NACTA Program, the Fund will consider the extent and effectiveness to which the applicant has used previous assistance from the Fund and the community development impact that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

(iii) The Fund will take into consideration the Community Reinvestment Act (CRA) rating of any applicant that is an Insured Depository Institution or Depository Institution Holding Company. The Fund will not approve a Financial Assistance award to any applicant that does not currently have at least a "Satisfactory" CRA rating.

2. *Management and Underwriting* (comprising 25 percent of possible points), including an evaluation of:

(a) *Portfolio quality:* the applicant's underwriting and portfolio quality;

(b) *Management controls:* including risk mitigation strategies; and

(c) *Management team:* the capacity, skills and experience of the applicant's management team as appropriate to deliver the proposed products and services and manage compliance with the Fund's reporting requirements.

3. *Financial Health and Viability* (comprising 25 percent of possible points), including an evaluation of:

(a) *Financial track record:* The applicant's liquidity and other elements of financial strength, including earnings, capital adequacy, and deployment of resources;

(b) *Financial projections:* the applicant's projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and

(c) *Safety and Soundness:* The Fund will not approve FA to any Insured Credit Union (other than a State-insured credit union) or Insured Depository Institution applicant that has a CAMEL rating that is higher than a "3" or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that (i) an upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and (ii) such upgrade is expected to occur not later than September 30, 2004 or within such other time frame deemed acceptable by the Fund.

B. *Review and Selection Process:* All applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected as incomplete and returned to the sender.

If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the CDFI Program regulations, this NOFA and the application. First, the Fund will determine whether the applicant has a need for capital (for Financial Products, reserves, Development Services, or Financial Services), based on the applicant's projections of capital available and activities projected. Applicants not projecting a need for capital will not be considered for FA. Next, the Fund will determine whether the applicant has matching funds in-hand and/or firmly committed. If there are no matching funds documented as in-hand or firmly committed, the applicant will not be considered for FA.

In the case of an applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The applicant's noncompliance with any active award or award that terminated in calendar year 2003, in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2002 and 2003); and (ii) the applicant's failure to make timely loan payments to the Fund during the applicant's two complete fiscal years prior to the application deadline of this NOFA. Additionally, the Fund may take into account performance on any prior assistance agreement as part of the overall assessment of the applicant's ability to carry out its Comprehensive Business Plan. All outstanding reports or compliance questions should be

directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through April 26, 2004 (2 days before the application deadline). The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on April 26, 2004 until after the funding application deadline of April 28, 2004.

The Fund shall consider the institutional and geographic diversity of applicants in making its funding determinations.

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining clarifying or confirming application information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of Insured CDFIs, the selecting official will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-insured credit unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for awards based on substantive issues will be given the opportunity to obtain feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's website.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is in default of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

B. *Assistance Agreement:* Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund prior to disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to, (i) the amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all awardees. Assistance Agreements under this NOFA will generally have three-year performance periods.

The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each awardee that receives an award either (i) in the form of a loan, Equity Investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. All other awardees must provide the Fund with a good standing certificate (or equivalent documentation) from their state (or jurisdiction) of incorporation.

C. *Administrative and Policy Requirements:* (a) *Performance Rating: PLUM:* In order to better manage its portfolio of awards, the Fund is developing a performance rating system, called PLUM, which will rate each CDFI according to its overall financial strength and potential for creating community development impact. Initially, PLUM will serve as the Fund's internal portfolio risk rating tool. PLUM will cover four areas: Performance effectiveness/community development impact; Leverage, liquidity and solvency; Underwriting (including portfolio quality); and Management. The Fund currently is conducting the analyses needed to identify appropriate peer groups and target ranges for each indicator. In order that additional data can be collected for the Fund's analyses, indicators within the above four areas have been incorporated into the FY 2004 Financial Assistance Component application. Each CDFI will have access to its own PLUM rating.

(b) *Fees:* The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing

any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* (a) *Reporting Requirements:* The Fund will collect information, on at least an annual basis, from all CDFI Program awardees including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Performance Goals Report/Annual Survey; (iii) Financial Status Report (for TA awardees); (iv) Uses of Financial Assistance and Matching Funds Report; and (v) Explanation of Noncompliance (as applicable). Awardees are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Surveys or Financial Reports, or other documentation that the Fund may require, the awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Performance Goals Report/Annual Survey must be submitted through the Fund's new web-based data collection system, the Community Investment Impact System (CIIS). All other components of the Annual Report may be submitted to the Fund in paper form. CIIS is currently under development and is expected to be operational in April 2004. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to awardees.

(b) *Accounting:* The Fund will require each awardee that receives FA and TA under this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA received from the Fund, the awardee will be required to inform the Fund of its uses. This may require awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) states that, as applicable, recipients of Federal funds "must be able to account for the receipt, obligation, and expenditure of funds." Further, OMB Circular A–110 states that "Recipients shall maintain advances of Federal funds in interest bearing accounts unless (1), (2), or (3) apply:

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash advances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources." The Fund will provide guidance to awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through April 26, 2004 (2 days before the application deadline). The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on April 26, 2004, until after the funding application deadline of April 28, 2004.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating Hot Zone or Investment Area maps using the Fund's website should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program Operations Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at 202/622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Administrative Support:* If you have any questions regarding the administrative requirements of this NOFA, contact the Fund's Grants Management and Compliance Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2004 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: February 23, 2004.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–4301 Filed 2–25–04; 8:45 am]

BILLING CODE 4810–70–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 970, Application To Use LIFO Inventory Method.

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW.,

Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: Form 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made. Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 3000.

Estimated Time Per Respondent: 13 hours, 55 minutes.

Estimated Total Annual Burden Hours: 41,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 18, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4288 Filed 2–25–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, March 11, 2004, from 3 to 4 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, March 11, 2004, from 3 to 4 p.m., Eastern standard time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or on the Web site at *http://www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: February 20, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–4287 Filed 2–25–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 38
Thursday, February 26, 2004

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0016]

Medical Devices; Revised MedWatch Forms; Availability

Correction

In notice document 04–3333 beginning on page 7490 in the issue of Tuesday, February 17, 2004 make the following correction:

On page 7492, in the first column, in the first paragragh, in the 13th and 14th lines "[insert date 6 months after date of publication in the Federal Register]" should read "August 17, 2004."

[FR Doc. C4–3333 Filed 2–25–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
February 26, 2004

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 141, 260, et al.
Quarterly Financial Reporting and Revisions to the Annual Reports; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 260, 357, and 375

[Docket No. RM03–8–000]

Quarterly Financial Reporting and Revisions to the Annual Reports

February 11, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (FERC or Commission) is amending its financial reporting regulations to establish new quarterly financial reporting for respondents that file FERC Annual Reports. The Commission is updating its financial annual reporting requirements to add new schedules on ancillary services, electric transmission peak loads, and is updating the statistical classifications reported on certain schedules. The Commission is also updating the corporate officer's certification for the FERC Annual Reports, modifying filing dates, allowing respondents to submit the CPA certification electronically, and eliminating the cash management notification requirement.

This Final Rule will improve the usefulness and transparency of financial information submitted to the Commission. The increased frequency of financial reporting will help the Commission identify and evaluate emerging trends, business conditions and financial issues affecting reporting entities. Additionally, the information contained in the quarterly financial reports will identify the economic effects of significant transactions and events, allow more timely evaluations of the adequacy of existing cost-based rates, and aid in the development of needed changes to existing regulatory initiatives. Finally, more frequent and transparent financial reporting resulting from this Final Rule will help the Commission achieve its goal of vigilant oversight over reporting entities.

EFFECTIVE DATE: The rule will become effective March 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, (202) 502–8283.

Julie Kuhns (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, (202) 502–6287.

Christopher Bublitz (Technical Information), Office of Administrative Litigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, (202) 502–8542.

Julia Lake (Legal Information), Office of the General Council, Federal Energy Regulatory Commission, 888 First Street. NE., Washington DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION:

Table of Contents

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

I. Introduction

1.The Federal Energy Regulatory Commission is amending its financial reporting regulations. In a Notice of Proposed Rulemaking issued on June 26, 2003, the Commission proposed to amend its financial reporting regulations for public utilities and licensees,[1] natural gas companies,[2] and oil pipeline companies,[3] by establishing new quarterly financial reporting for jurisdictional entities. Additionally, the Commission proposed changes to the FERC Annual Report Forms 1, 1–F, 2, 2–A, and 6 by adding new reporting requirements, updating the corporate officer's certification requirements and accelerating the filing dates for all filers of the FERC Annual Reports.[4] The proposed changes to the FERC Annual Reports were made primarily to achieve symmetry in these areas with the requirements for the proposed quarterly financial reports.

2. After carefully considering the comments received, the Commission has determined that a Final Rule revising its financial reporting regulations should be issued. The purpose of this Final Rule is to improve the usefulness and transparency of financial information provided to the Commission. The Final Rule contains significant modifications from the Notice of Proposed Rulemaking (NOPR) based upon comments received.[5] These changes should greatly reduce the administrative burden cited by filers of the quarterly financial reports, and the FERC Annual Reports, while providing the Commission with greater transparency of financial information from these respondents. The increased frequency and transparency of financial reporting will help the Commission identify and evaluate emerging trends, business conditions and financial issues affecting regulated entities.

II. Background

3. Financial accounting and reporting provides needed information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform Systems of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period,

[1] Part 141 Statements and Reports (Schedules). *See* 18 CFR Part 141.

[2] Part 260 Statements and Reports (Schedules). *See* 18 CFR Part 260.

[3] Part 357 Annual Special or Periodic Reports: Carriers Subject to Part 1 of the Interstate Commerce Act. *See* 18 CFR Part 357.

[4] The FERC Annual Reports bear the following OMB approval control numbers: Form 1 has OMB approval number 1902–0021; Form 1–F has OMB approval number 1092–0029; Form 2 has OMB approval number 1902–0028; Form 2–A has OMB approval number 1902–0030; and Form 6 has OMB approval number 1092–0022.

[5] 68 FR 40339 (July 7, 2003), IV FERC Stats. & Regs. ¶ 32,571 (June 26, 2003).

service, or line of business.[6] Additionally, it would be difficult to determine whether a given entity has previously been given the opportunity to recover its costs through rates, or to compare how the financial performance and results of operations of one regulated entity relates to that of another.

4. The need for current and better disclosures in financial statements drives the increasing demand for timely, relevant and reliable financial information. In order to improve the timeliness and the transparency of the financial information for FERC jurisdictional entities, the Commission proposed the filing of quarterly financial reports by respondents that file FERC Annual Report Forms 1, 1–F, 2, 2–A, or 6. Additionally, to strengthen the reliability of the information, the Commission proposed to update its corporate officer certification contained in the financial reports.

5. The two new financial reports proposed in the NOPR were the FERC Form No. 3–Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and the FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies. These two new quarterly financial reports would act as a supplement to the existing FERC Annual Reports by collecting basic financial information and certain financial related information from jurisdictional entities.

6. Additionally, as part of the Commission effort to update its financial reporting regulations, the NOPR proposed changes to the FERC Annual Report Forms 1, 1–F, 2, 2–A, and 6. The proposed changes to the FERC Annual Reports included the reporting of selected fourth quarter financial data, adding a new management discussion and analysis (MD&A) schedule, adding new schedules to collect data on ancillary services and electric transmission peak load, updating the statistical classifications, allowing respondents to submit the annual CPA certification electronically, updating the corporate officer certification, and modifying the filing dates.

[6] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. *See* 18 CFR part 101 (2003). Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. *See* 18 CFR Part 352 (2003). Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. *See* 18 CFR Part 352 (2003).

III. Discussion

A. General

7. The Commission received 74 comments from users and jurisdictional entities that file FERC Annual Reports.[7] Users of the FERC Annual Reports were generally supportive of the Commission's proposal to require more timely, relevant, reliable, and transparent financial reporting from jurisdictional entities while respondents raised major concerns about the additional administrative burden they would experience to gather, review, certify and submit the required information within the proposed time frames. After careful consideration of all the comments received, the Commission is adopting quarterly financial reporting and changes to the FERC Annual Reports as proposed in the NOPR, with certain modifications and clarifications as discussed below. The Commission is confident that the Final Rule strikes the appropriate balance between the administrative burden placed on respondents and the benefits achieved through more frequent, transparent, and reliable reporting of financial information.

B. Quarterly Financial Reports

8. Under the proposed rule, a jurisdictional entity filing a FERC Annual Report would be required to file a basic set of financial statements on a quarterly basis prepared in accordance with the Commission's Uniform Systems of Accounts and related regulations. Additionally, as part of collecting a basic set of financial statements on a quarterly basis, the Commission proposed to collect certain information on matters that respondents report on an annual basis.

9. For the reasons discussed below, the Commission will require the submission of a basic set of financial statements and other selected data to be included in the quarterly financial reports. The Commission will also modify the proposed filing dates, the requirements for the notes to the financial statements, and the corporate officer certification statement.

10. The Commission will not include as part of the Final Rule the requirement that respondents include an MD&A schedule, or the requirement that respondents submit a copy of a CPA review letter if they had the FERC quarterly report reviewed by their external accountant. Finally, the Commission will not include the requirement that respondents report fourth quarter data separately from the annual data in the FERC Annual Reports.

[7] *See* Appendix A for List of Commenters.

1. Basic Set of Financial Statements

11. The basic financial statements proposed to be included in the quarterly financial reports were the Comparative Balance Sheet, the Statement of Income and Retained Earnings, the Statement of Cash Flows, and the Statement of Other Comprehensive Income and Hedging Activities.

Comments Received

12. State regulatory bodies and others that rely on the accounting information to develop and monitor the rates paid for services are generally supportive of the changes in reporting, and view the proposal as essential for the Commission to achieve its stated purpose of providing more vigilant oversight though more timely reporting of financial information. Additionally, these commenters state that while a number of state utility regulatory commissions have quarterly and even monthly financial reporting requirements, the Commissions proposal provides more consistent and standardized reporting, and provides the needed financial information from FERC-jurisdictional entities at a level of detail that is not obtainable from other sources.[8] NARUC agrees with FERC that while some jurisdictional entities may file similar information with the U. S. Securities and Exchange Commission (SEC), the level of detail concerning assets, liabilities, stockholders equity along with the revenues, expenses, gains, and losses is different for FERC and SEC reporting. Finally, NARUC believes the FERC proposal improves the financial reporting by public utilities on a jurisdictional basis that is most useful to FERC and the different State commissions.

13. Comments filed by AOPL and INGAA concerning the administrative burden jurisdictional entities would incur if required to comply with certain aspects of the proposal included statistics that also support the view that financial information is not readily available from public sources such as the SEC. AOPL states that of the 194 oil pipeline companies with tariffs on file at the FERC, only three file reports under SEC rules. AOPL states that an equal number of pipelines are privately held and have no SEC reporting requirements. And the remainder fall somewhere in between, supporting one or more direct or indirect parents having SEC reporting requirements. INGAA

[8] *See* APGA at 2 and 3; ISO/RTO Council at 2 and 3; Missouri PSC at 3 and NARUC at 2.

states that only 20 percent of their members are SEC filers.

Commission Response

14. As the commenters correctly observe, the financial information required by the Commission may not be readily available from other public sources because many FERC jurisdictional entities do not file financial statements with the SEC. For example, a company may be exempt from SEC reporting if it has no registered securities on a national securities exchange, or if its total assets are less than $10 million with a class of equity securities held by less than 500 persons. Additionally, a company may not file financial information with the SEC if it is privately held, or if it is a cooperative.

15. Additionally, those companies that do make public filings may consolidate their regulated and unregulated operations, or report the data in such a manner that is not consistent with the Commission's Uniform Systems of Accounts and related regulations. There may be differences in the manner in which certain transactions and events are displayed for stockholder reporting and to the Commission. These reporting differences may result from differences in reporting classifications prescribed by the Commission's Uniform Systems of Accounts, as well as the detailed schedules and related disclosure requirements contained in the FERC Annual Reports.[9] These differences arise from the Commission's need to develop and monitor cost based rates, analyze costs of different services and classes of assets, and to compare costs across lines of business.

16. Based upon the comments received, it is abundantly clear that the financial information filed with this Commission represents, in most cases, the only source of financial data presented in a format and detail suitable for the Commission to exercise its duties and responsibilities under the Federal Power, Natural Gas, and Interstate Commerce Acts. Therefore, the Commission will require jurisdictional entities to supplement their FERC Annual Reports with the filing of quarterly financial reports as proposed in the NOPR. The basic financial statements to be included in the quarterly financial reports are the Comparative Balance Sheet, the Statement of Income and Retained Earnings, the Statement of Cash Flows, and the Statement of Other Comprehensive Income and Hedging Activities.

17. The information contained in the quarterly financial reports will identify the economic effects of significant transactions and events, allow staff to evaluate the adequacy of existing cost-based rates, and aid in the development of needed changes to existing regulatory initiatives. This information will strengthen the Commission's ongoing activities in identifying emerging trends, and in identifying the impacts that new accounting standards, or changes in existing accounting standards, have on respondents.

2. Other Selected Financial Information

18. In addition to requiring respondents to file a basic set of financial statements, the NOPR proposed that certain detailed information be filed with the Commission. The information sought in the supplementary schedules was not new information, rather it is the same information already submitted by respondents on an annual basis in the FERC Annual Reports. The supplementary information includes revenues and the related quantities of product sold or transported, the account balances for various operating and maintenance expenses, selected plant cost data, and information concerning the nature of regulatory assets and liabilities being created or amortized during the period.

Comments Received

19. While some commenters support the proposal, many do not believe this level of account detail is needed. They urge the Commission to remove the supporting financial and related information. Some commenters state that the information is difficult to collect within a quarterly deadline and not necessary to monitor trends within the industry on an interim basis.[10] Some comment that, due to the filing dates, some of the amounts will need to be estimated because the actual data will not be available until after the filing deadline.[11] Chevron states that certain information of liquid volumes transported by type, the specifics of its state of origin and its destination would be difficult to compile on a quarterly basis because it does not currently maintain this information in a format that readily lends itself to quarterly reporting.

20. Finally, some commenters suggest alternatives to the schedules proposed in the NOPR by requiring the reporting of key information that they believe materially affects equity, financing, business structure or the operations of the regulated entity. Examples of the information commenters recommend reporting include acquisitions, divestures and abandonments, new financing arrangements, hedges and derivatives, and pipeline shutdowns.[12]

Commission Response

21. Congress granted the Commission authority to prescribe periodic financial and non-financial reporting.[13] All jurisdictional entities subject to the Commission's accounting and financial reporting regulations are required to keep their books and records in such a manner as to permit the preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts. Furthermore, the accounting period prescribed by the Uniform Systems of Accounts is a calendar month.[14] Consequently, the Commission's existing regulations require jurisdictional entities to have accounting and financial reporting systems in place to readily prepare financial and operating statements summarized on a monthly basis. Therefore, it should not be unduly burdensome for these entities to prepare and report on account activity on a monthly, quarterly, or annual basis when required to do so by this Commission.

22. The supplemental schedules provide important details regarding the types and sources of revenues, the category and types of costs incurred, the assets and utility investments made by the respondent, significant new borrowings incurred during the period, as well as information about the establishment and disposition of regulatory assets and liabilities during the period. The reporting of this detailed information allows Commission staff to better understand emerging trends experienced by the respondents, and the economic impact that significant transactions, events, and regulatory initiatives have on regulated

[9] *See, e.g.*, AOPL's Appendix C; EEI at 8 and 9; NiSource at 19 and Shell Pipeline's Attachment A.

[10] *See, e.g.*, Arizona at 5; Detroit Ed at 4; EEI at 12; Entergy at 3 and MidAmerica at 2.

[11] *See* Arizona at 5 and EEI at 12.

[12] *See, e.g.*, AOPL at 26.

[13] Authority granted to the Commission pursuant to sections 4, 304 and 309 of the Federal Power Act, Sections 10(a) and 16 of the Natural Gas Act, and Section 20 of the Interstate Commerce Act. *See* 16 U.S.C. 797, 825c and 825h; 15 U.S.C. 717i(a) and 717o; and 49 App. U.S.C. 1–85 (1988).

[14] *See* 18 CFR Parts 101 and 201, General Instruction 3(c) and 4, for the accounting period and financial statement requirements of public utilities and licensees, and natural gas companies, and 18 CFR Part 352, General Instruction 1–3, for the accounting period and financial statement requirements of oil pipeline companies.

operations. Additionally, this level of detailed reporting helps ensure that emerging financial trends are not masked due to the consolidation of various account balances. Finally, this level of detail along with the related notes contained in the reports will allow the Commission to better monitor the adequacy of cost based rates on a more timely basis, and to monitor the respondents' overall compliance with Commission regulations.

23. The collection of selected or fragmented data, as urged by some commenters, will not provide a complete financial picture of how certain events or transactions have impacted the financial condition or results of operations of the jurisdictional entity. Nor will reporting changes for only a selected or isolated set of transactions or events provide the Commission with the means to view the matter in a complete financial context. Selected reporting will not allow for the comparability of those economic effects among others within the same industry, or provide reasonable assurance that emerging trends affecting the respondents will be reported. Finally, under the alternative approach, it will be extremely difficult to create an exhaustive listing of transactions or events that should be reported, or what particular aspects of any particular transaction or event should be disclosed. Therefore, the Commission declines to adopt the commenter's alternative approach to the supplemental schedules.

3. Management Discussion and Analysis

24. The Commission proposed to include a new schedule to the quarterly and annual reports entitled Management's Discussion and Analysis of Financial Condition and Results of Operation (commonly referred to as the "MD&A"). This schedule would contain a forward looking discussion regarding the probable impact of current and future events on the respondent's operations. In order to add reporting structure to the free flowing written disclosure format used in the SEC reports, the proposal included a listing of 17 items common to FERC jurisdictional entities that should be addressed if that matter was significant to the company with the additional instruction for respondents to discuss any other significant events not listed that could potentially positively or negatively impact the company. Finally, as noted in the NOPR, the MD&A is a required disclosure for publicly traded companies pursuant to SEC regulations.

Comments Received

25. APGA supports the objectives and believes that the MD&A could achieve them. APGA views the MD&A schedule at a jurisdictional entity level as critically important, and also suggests that the Commission include a requirement that jurisdictional entities file a notification with the Commission when a material change has occurred.

26. However, the vast majority of the comments received on the form and content of the MD&A schedule urge the Commission to eliminate, or modify, the proposed requirement. Most commenters express concern for potential litigation that could arise with such forward looking statements along with the significant administrative burden companies might incur if they are required to complete the MD&A schedule as proposed in the NOPR.[15]

27. Many commenters argue that the SEC has substantial "safe harbor" rules that provide protection to companies from potential litigation risks associated with disclosing this type of information. These commenters urge the Commission adopt safe harbor rules similar to those of the SEC.[16]

28. Commenters that urge the Commission to adopt a safe harbor provision state that under the Private Securities Litigation Reform Act of 1995 (PSLRA), the SEC provides a safe harbor from liability for forward-looking information.[17] They argue that absent statutory protection, SEC registrants making corporate disclosures might be subject to damage claims if, and when, their forward-looking statements failed to correspond to actual results, and that the types of information that would be elicited in the MD&A reporting requirement appear to be precisely the types of statements for which a safe harbor is needed. They state that Congress and the SEC recognize how future looking statements can be highly charged and subject to misinterpretation, and that Congress viewed it necessary to enact statutory protection for such disclosures. These commenters further argue that it is not clear whether any of the protections applicable to SEC registrants under the PSLRA would be enjoyed by FERC jurisdictional entities that are not SEC registrants. Finally, they argue that, before imposing the MD&A requirements, the Commission should be in a position to assure respondents that they have full safe harbor protection similar to that which applies to SEC registrants.

29. Some commenters that currently file SEC reports request that they be permitted to submit MD&A prepared under SEC guidance in their FERC annual and quarterly financial reports.[18] Others also seek clarification on the definition of materiality and request that the Commission adopt the SEC definition of materiality. They state that a difference in levels of materially could lead to different MD&A prepared for the SEC and FERC. These material differences could lead to potential litigation.[19] Some commenters also request that the MD&A content be modified to focus on historical events and be less speculative.[20]

30. Other commenters urge that at the very least, the format of the MD&A in the proposal be modified. These commenters seek clarification on the specific 17 proposed items in the MD&A section. They question the value of the proposed information, while others request that the MD&A schedule be more free flowing.[21] PSEG questions if the 17 items are intended as general guidance to preparing the MD&A, or if they are required by each filer. PSEG also requests that the quarterly MD&A be treated as an update to the annual MD&A and only require significant or material changes from the FERC Annual Report be reported, similar to the quarterly MD&A filed with the SEC. Other commenters express concern that the proposed MD&A, in the proposed format, goes beyond the SEC MD&A requirements. These commenters point out that the SEC requires only material changes to be reported quarterly in MD&A.[22] AEP refers to the SEC method for reporting MD&A as familiar and with extensive guidelines. Entergy requests the Commission eliminate the "boiler plate" approach to MD&A.

31. Although commenters recognize the need for information at the jurisdictional level,[23] some privately-held companies express concern because they currently do not prepare

[15] *See, e.g.*, INGAA at 2; AOPL at 20 and EEI at 5.

[16] *See, e.g.*, BP at 7; AOPL at 22; Kinder Morgan at 12; PSEG at 11; INGAA at 16 through 19 and Southern at 2.

[17] *See* Private Securities Litigation Reform Act of 1995, Pub. L. 104–67, 109 Stat. 737 (1996).

[18] *See* NU at 7; Old Dominion at 7; EEI at 11 and NRECA at 9.

[19] *See, e.g.*, AEP at 2; KeySpan at 9; Gulf South at 8; Shell Gas at 7 and 8; NiSource at 16 and Shell Pipeline at 2.

[20] *See* Plains at 5; AEP at 2; Duke at 4; SCE at 7; INGAA at 10; Gulfterra at 6 and 7; EEI at 18 and Southern at 2.

[21] *See* PSEG at 11; AEP at 2; National Grid at 6 and Entergy at 3.

[22] *See, e.g.*, PacifiCorp at 11–12; Duke at 5; SCE at 4; Shell Pipeline at 12; INGAA at 22 and EEI at 5.

[23] *See* APGA at 5 and NARUC at 2 and 3.

an MD&A.[24] Oil industry commenters also express concern regarding the potential for revealing confidential shipper data in MD&A.[25] Commenters also indicate that the MD&A, as proposed by the Commission, may create unintended administrative burden in its present form.[26] Additionally, there are a few commenters that believe the MD&A, in the proposed format, overlaps with that of the SEC, and is unnecessary.[27]

Commission Response

32. Based upon the comments received, the Commission will not include the MD&A schedule in the quarterly financial reports or in the FERC Annual Reports. Although the Commission recognizes the benefits of obtaining similar information at a jurisdictional entity level from all public and non-public jurisdictional entities that file financial information with the Commission, the potential litigation and confidentiality issues that may arise, in addition to the various administrative burden issues raised by the commenters of both privately held and publicly held companies, appear to outweigh the benefits derived from obtaining such information as proposed in the NOPR.

4. Notes to the Financial Statements

33. The NOPR proposed the inclusion of notes to the financial statements in accordance with current accounting principles. Additionally, the NOPR required respondents to provide information on certain subjects that are also reported in the FERC Annual Reports. These subjects included the reporting of pension plan details, restrictions on retained earnings, significant refunds, and other items that have been reported in the respondent's prior year FERC Annual Report.

Comments Received

34. Some commenters suggest that the Commission eliminate the requirement to provide notes to the financials, while others urge the Commission to require only a condensed or abbreviated set of quarterly financial notes that discuss material changes occurring since the prior FERC Annual Report filing.[28] Others urge the Commission to permit respondents to file notes to the financials statements which are consistent with those provided in their SEC Form 10–K.[29]

Commission Response

35. The notes to the financial statements are an extension of the basic financial statements and are integrally related to them. The notes enable users of the data to understand the nature of the amounts presented in the financial statements and better interpret its meaning.

36. Consequently, the Commission will require respondents include notes to the financial statements in their quarterly financial reports. However, the Commission will adopt the commenters' recommendation that respondents be permitted to file abbreviated notes to the financial statements in their quarterly financial reports.

37. The use of abbreviated notes will be equivalent to the requirements for interim reporting established by the SEC.[30] Under these requirements, filers of the FERC quarterly financial reports must include disclosures in the accompanying notes sufficient so as to make the interim information not misleading.

38. Quarterly financial reporting is a supplement to the FERC Annual Reports, and it presumes the users of the quarterly financial reports have read the audited financial statements from the preceding year, including the notes to the annual financial statements. Therefore, footnote disclosure which would substantially duplicate the disclosures contained in the most recent FERC Annual Report may be omitted. However, disclosure must be provided where events subsequent to the end of the most recent year have occurred which have a material effect on the respondent.

39. Equivalent to the SEC footnote disclosure requirements, the Commission will require respondents to include in their notes significant changes since the most recently completed year in such items as: accounting principles and practices; estimates inherent in the preparation of the financial statements; status of long-term contracts; capitalization including significant new borrowings or modifications of existing financing agreements; and changes resulting from business combinations or dispositions. And similar to the SEC requirements for interim reporting, where material contingencies exist, the disclosure of such matters must be provided even though a significant change since year end may not have occurred.

40. The use of abbreviated notes will minimize duplicate disclosures, reduce the administrative burden cited by some commenters, and ensure that the interim information presented in the financial statements is not misleading. Finally, to the extent that the notes to the financial statements relating to the respondents appearing in the annual report to stockholders are applicable and furnish the required data, such notes may be included in the quarterly financial reports.

5. Filing Dates for the Quarterly Financial Reports

41. The Commission proposed that jurisdictional entities would submit the quarterly financial reports using a phase-in approach. The phase-in approach would start in 2004 with the reports filed 45 days after the end of the quarter, and accelerate the filing date to 35 days after the end of the quarter by September 2005. This phase-in approach, and related filing dates, would have been applicable to all respondents.

Comments Received

42. Most commenters urge the Commission to provide "breathing room" between the filing dates of the SEC quarterly reports and the filings dates of the FERC quarterly reports. Commenters recommend extensions ranging from 20 days to 60 days, or longer, after the applicable SEC quarterly filing dates. Commenters state that extending the deadline will reduce administrative burden, allow more productive use of staff, and result in better quality of reporting by allowing filers a reasonable period of time to gather the appropriate information and properly prepare the quarterly reports.[31] Some commenters also urge the Commission to provide a temporary filing extension for the initial 2004 reporting year to give respondents extra time to establish procedures and work through learning curves.[32] These commenters state that only SEC filers that meet certain criteria must file on an accelerated basis, and that the Commission's proposal will result in smaller companies filing financial statements with the FERC before they are required to file with the SEC. Finally, Iroquois echoes in its comments the SEC's view that while larger companies may have more complex

[24] *See* AOPL at. 7; Williston Basin at 6 and KeySpan at 11.

[25] *See* AOPL at 21; Plains at 5; Kinder Morgan at 13; Williston Basin at 6; Gulfterra at 7 and BP at 7.

[26] *See* PSEG at 6; Colonial at 4 and Portland General at 2.

[27] *See* ConEd at 1; MidAmerican at 2; Arizona at 5; Pepco at 1 and Entergy at 1.

[28] *See, e.g.*, AEP at 2; Cinergy at 4 and Entergy at 3.

[29] *See, e.g.*, EEI at 4; FirstEnergy at 4 and Iroquois at 4.

[30] *See* SEC Regulation S–X, Rule 10–01(a)(5).

[31] *See, e.g.*, AEP at 3; Arizona at 8; AOPL at 16; Cinergy at 5; EEI at 7 and INGAA at 24.

[32] *See, e.g.*, Arizona at 8 and EEI at 7.

operations, they also are more likely than smaller companies to have the infrastructure and resources to report on an accelerated basis.

Commission Response

43. Based upon the comments received, the Commission will modify the proposed filing dates so that respondents may properly prepare, review, and certify the quarterly financial reports filed with the Commission. The modifications made to the proposed filings dates will provide for greater precision in the data reported without imposing an undue burden on respondents.

44. It is important to balance the Commission's need for financial information with the ability of the respondent to prepare that information without undue burden. As noted by many commenters, the SEC has only accelerated the filing dates for large public companies that meet certain criteria while others may continue to file their reports using the existing filing dates.[33]

45. Therefore, beginning in 2005 major public utilities and licensees, and major natural gas companies will be required to file their quarterly reports 60 days after the end of the quarter. Nonmajor public utilities and nonmajor natural gas companies, and all oil pipeline companies will be given additional time to file their quarterly financial reports. These respondents will file their quarterly financial reports within 70 days after the end of the quarter. These modifications to the filing dates proposed in the NOPR should relieve most of the administrative burden cited by jurisdictional entities caused by identical FERC and SEC filing dates for quarterly financial reporting.

46. Additionally, the Commission will provide additional relief during the initial year of reporting, as urged by some commenters. A temporary filing extension will be provided for the quarterly filings made in 2004 in order to provide respondents additional time to establish the necessary procedures to report financial information on a quarterly basis as shown in the table below:

	Quarterly period	Filing dates for all respondents as proposed in the NOPR	Filing dates for major electric and natural gas respondents in final rule	Filing dates for nonmajor electric, nonmajor natural gas, and all oil pipeline respondents in final rule
1	1/1/2004—3/31/2004	May 15, 2004	July 9, 2004	July 23, 2004.
2	4/1/2004—6/30/2004	August 14, 2004	September 8, 2004	September 22, 2004.
3	7/1/2004—9/30/2004	November 14, 2004	December 9, 2004	December 23, 2004.
4	1/1/2005—3/31/2005	May 10, 2005	May 31, 2005	June 13, 2005.
5	4/1/2005—6/30/2005	August 9, 2005	August 29, 2005	September 12, 2005.
6	7/1/2005—9/30/2005	November 9, 2005	November 29, 2005	December 13, 2005.
7	Subsequent Quarters	35 days after the end of the quarter.	60 days after the end of the quarter..	70 days after the end of the of the quarter.

47. Finally, in order to reduce the administrative burden incurred by respondents during the initial reporting year, the Commission will only require that current year data be included in the quarterly financial reports filed during 2004. Respondents will not be required to report prior year's quarterly amounts in these filings.

6. Certified Public Accountant Review Letter

48. In the NOPR, the Commission explains that it is not requiring the quarterly financial report to be reviewed by the respondent's certified public accountant (CPA). However, the NOPR states that if a company has its quarterly financial report reviewed, it must provide a copy of the CPA review report to the Commission.

Comments Received

49. Some commenters agree with the proposal requiring the submission of a CPA review letter only when an external accountant reviews the Commission's quarterly financial report and provides the respondent with a report.[34] Others state that the Commission should use the SEC approach which requires a registrant to obtain an external review of interim financial information but does not require a letter evidencing such a review unless the company states in the filing that the financial information was reviewed by an independent CPA.[35]

50. External accounting firms state that there is no provision under the American Institute of Certified Public Accountants (AICPA) Professional Standards that govern the roles and responsibilities of the independent accountant in reviewing a set of interim financial statements prepared under another comprehensive basis of accounting (OCBOA) for a SEC registrant, or non-SEC registrant, unless the non-SEC registrant is making a filing with a regulatory agency in preparation for a public offering or listing. They suggest that the Commission consider working with the Public Company Accounting Oversight Board in promulgating reporting standards for performing interim reviews on financial statements prepared on an OCBOA basis, and they are willing to assist Commission staff in this effort.[36]

Commission Response

51. The Commission will not require respondents to have the quarterly financial report reviewed by a CPA, nor will it require respondents to submit a copy of the CPA review letter or report if one is issued by an external accountant. As previously stated in this Final Rule, quarterly financial reports are considered to be supplements to the respondent's FERC Annual Report. As such, the Chief Financial Officer will attest to the quarterly and annual financial reports. Additionally, the FERC Annual Reports, as a general matter, are audited by the respondents' external accountants, and respondents are required, under the Commission's existing regulations, to submit a copy of the auditor's report to the Commission. Therefore, the Commission finds that an appropriate balance is struck between the reliability of the data and the administrative costs respondents incur to provide the data to the Commission.

7. Exemption Requests

52. The Commission received numerous requests from respondents to be exempt from filing a quarterly financial report. Most respondents urge

[33] *See, e.g.*, Portland General at 5; FirstEnergy at 6, MidAmerica at 2 and INGAA at 24.

[34] *See* APGA at 6 and ITC at 2.

[35] *See* EEI at 20 and PSEG at 14.

[36] *See* D&T at 3 and PWC at 2 and 3.

the Commission to waive the filing requirements due to the administrative burden caused by the content and accelerated filing dates proposed in the NOPR. As more fully discussed below, the Commission is of the view that blanket exemptions or waivers are not necessary due to the modifications and changes made to the proposal in the Final Rule. Therefore, as provided in the NOPR and contained in this Final Rule, respondents that file a FERC Annual Report No. 1, 1–F, 2, 2–A, or 6 are required to file quarterly financial reports. However, a jurisdictional entity with a waiver from filing a FERC Annual Report No. 1, 1–F, 2, 2–A, or 6 is exempt from filing quarterly financial reports.

Comments Received

53. Some public utilities and natural gas companies urge the Commission to grant exemptions from the quarterly financial reporting requirements due to the administrative burden, and recommend the Commission exempt respondents that file FERC Annual Report Nos. 1–F and 2–A from the quarterly reporting requirement.[37]

54. Some commenters suggest an exemption for FERC respondents with revenues under various amounts, or an exemption for those that do not file financial statements with the SEC.[38] MPSC urges the Commission to waive the reporting requirements for those that do not have a significant energy presence or who are not involved in generation, power marketing, and trading. National Grid suggests that companies within an affiliated group of companies be exempt if they represent less than 10 percent of the affiliated group's consolidated operating revenues, gross plant assets, and number of utility customers, or considering using a threshold that exempts entities in the bottom 10 percent as measured by operating revenues, gross plant, or using other measures. Certain electric cooperatives urge the Commission to exempt electric distribution cooperatives from any final rule because they are not major participants in the capital markets and state this rule will be a hardship.[39]

55. The ISO/RTO Council focuses on the increased administrative burden that will be imposed if an MD&A, accelerated filing dates, and expanded corporate officer certification are required, and therefore urge the Commission to exempt them from quarterly financial reporting. It states that they have an almost *de minimis* value of physical assets and have no ownership interest in the utility infrastructures that are under operational control. Therefore, the significantly smaller capital requirements of an ISO or RTO will be provided by non-public sources such as administrative service charges to its market participants, bank financing lines or private-placement debt instruments.[40]

56. The ISO/RTO Council argues that there is no public ownership and that its members are formed as not-for-profit corporations or otherwise operate on a revenue neutral basis under its respective state or provincial laws. It states that none of the Joint ISO/RTOs are authorized to, nor have, issued to the public any shares of ownership interest in their entities, and none are affiliated with any company that has done so.[41] It also states that ISOs/RTOs are service organizations whose principle revenue streams typically come from cost-of-service based service charges from their market participants which are either specifically approved by this Commission or are derived from Commission authorized formula rates.[42]

57. Finally, it states that the Commission's Uniform System of Accounts does not in most cases translate well for effectively reporting financial and transactional results of ISO and RTO operations. It urges the Commission to re-institute its previous effort to develop a uniform chart of accounts that will be more applicable to ISO/RTO operations and states that the jurisdictional members of the ISO/RTO Council are prepared to fully support such an effort and contribute whatever resources are required to complete such an effort.[43]

Commission Response

58. Due to the modifications and changes made to the NOPR, the Commission has significantly reduced most of the administrative burden cited by the commenters as the primary justification for blanket exceptions from filing a quarterly financial report. For example, the Commission has eliminated the MD&A requirement from both the quarterly financial reports and the FERC Annual Reports, and will accept abbreviated notes to the quarterly financial reports. Additionally, the Final Rule provides additional relief for respondents by modifying the filing dates for the quarterly financial reports which will reduce the staffing resources needed to compile the data within the required timeframes. Therefore, the Commission will not provide blanket waivers or exemptions for respondents. Respondents must supplement their FERC Annual Reports with the quarterly financial reports as provided for in this Final Rule.

59. Finally, the Commission's staff has participated in informal meetings held to discuss potential accounting changes needed to the current regulatory accounting framework resulting from the formation of ISOs and RTOs. It continues to monitor the development of these entities in an effort to provide timely accounting guidance addressing their issues.[44] The Commission appreciates the ISO/RTO Council's offer to fully support an effort to update the Uniform System of Accounts to better accommodate their unique utility business model, and staff will continue to work with these entities and continue its efforts in this developing area.

C. Updates to the FERC Annual Reports

60. As part of updating the FERC Annual Reports, the Commission proposed to accelerate the filing dates. Additionally, the Commission proposed to add new schedules in the FERC Annual Report Nos. 1 and 1–F in order to collect information on the amount of ancillary services purchased and sold during the year, and to update the statistical classifications resulting from the use of the transmission system by and for others to reflect open access transmission established under Order No. 888.[45] The Commission also proposed to modify certain schedules that report revenues and expenses so that these schedules will report fourth quarter activity for certain account balances or utility functions. Based upon the comments received the Commission will modify certain aspects of the proposal as discussed below.

[37] *See, e.g.*, AGA at 3 and INGAA at 25.

[38] *See* AEP at 3 and 4; EEI at 5 and Southern at 3.

[39] *See, e.g.*, Connexus at 19 and Inland at 2.

[40] *See* ISO/RTO Council at 8.

[41] *Id.* at 9.

[42] *Id.* at 11.

[43] *Id.* at 8.

[44] For example, on October 1, 2001, the Chief Accountant issued Accounting Release No. 16, Operating and Administrating an Electric Power Exchange. This accounting release provided guidance to the electric industry on the proper accounting and reporting for revenues and expenses incurred to operate and administer a power exchange.

[45] *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles (Jan. 1991–June 1996), ¶ 31,036 (Apr. 24, 1996).

1. Filing Dates for the FERC Annual Reports

61. The Commission proposed to accelerate the filing dates for the FERC Annual Reports so that financial information will be obtained from all respondents on a more timely basis, and thereby increasing its transparency and usefulness. The Commission proposed that all respondents use the same accelerated filing dates adopted by the SEC.

Comments Received

62. APGA supports the proposal and suggests that due to advances in collecting and reporting an even shorter time frame may be appropriate. However, most commenters recommend that the existing filing dates remain, or even be extended, in order to give them additional time between the filing of the SEC 10–K reports and FERC Annual Reports.[46] These commenters cite significant administrative burden they will incur to prepare, review, and certify the FERC Annual Reports. Additionally D&T states that the acceleration of the FERC Annual Report deadline creates an additional burden for external accountants who must provide an auditor's opinion on the FERC Annual Report.

63. Oil pipeline companies assert that, under Section 20 of the Interstate Commerce Act, they have three months after the close of the reporting year to file their FERC Annual Reports with the Commission, and that many have found it difficult to meet the current filing date.[47] Kinder Morgan states that many pipelines routinely file for an extension of time to file because it has become difficult to meet the current March 31 deadline.

Commission Response

64. Based upon the comments received concerning the additional administrative burden that respondents will incur to implement the new corporate officer certification, and other reporting requirements contained in this Final Rule, the Commission will not require FERC Annual Reports to be filed on the same accelerated dates as proposed in the NOPR. The Commission will modify its existing filing dates for the FERC Annual Reports to provide for additional time to prepare and file the FERC Annual Reports.

65. In order to ease the administrative burden on respondents, the Commission will not include the proposed new schedules on ancillary services and other statistical classifications for the 2003 FERC Annual Reports that will be filed in 2004. Additionally, the Commission will modify the filing dates for the FERC Annual Reports as proposed in the NOPR. Finally, the Commission will provide for a temporary filing extension for the 2004 FERC Annual Report to give respondents additional time to establish the necessary procedures to report the data required by this Final Rule. These new dates and other modifications to the NOPR will relieve most of the administrative burden cited by the respondents and their external accountants. The table below details the filing dates for the Annual Report Forms 1, 1–F, 2, 2–A, and 6.

	Calendar year ending	Proposed in NOPR	Final rule
1	December 31, 2004	March 1, 2005	April 25, 2005.
2	Each Year Thereafter	March 1	April 18.

66. The modified filing dates for the FERC Annual Reports will reduce the administrative burden cited by respondents by eliminating simultaneous SEC 10–K and FERC Annual Report filings. Additionally, the new filing date will provide oil pipeline companies with additional time to file their FERC Annual Reports and thereby reduce the number of extension requests made by these respondents.

2. Ancillary Services

67. The Commission proposed to add a new schedule in the FERC Annual Report Nos. 1 and 1–F that details the amount of ancillary services purchased and sold during the year. The Commission explained in the NOPR that this schedule was needed because these services and related amounts have been reported in an inconsistent manner by most respondents. The proposed schedule would standardize the form and content of the data collected.

Comments Received

68. NARUC strongly supports the proposal to collect financial information on the amount of ancillary services purchased and sold during the year and argues that such information will help State commissions better monitor public utilities' compliance with open access transmission tariffs. Two commenters seek clarification concerning whether the data elements must be reported in dollars or megawatt hours.[48]

Commission Response

69. The Commission clarifies that the units of the data elements on the ancillary service schedule are to be reported in both dollars and the billing determinants reflecting usage.

70. For ratemaking and monitoring regulated transmission services, the Commission requires information from respondents on the dollar amounts for both expense and revenues associated with these services, as well as the usage-related billing determinants associated with these purchase and sales transactions. Therefore, the Commission will clarify the instructions and make the necessary modifications to the schedule for respondents to report both dollars and usage-related billing determinants associated with these services.

3. Electric Transmission Peak Loads

71. The Commission proposed a new schedule in the FERC Annual Report Nos. 1, 1–F, and in the quarterly financial reports that would collect information concerning the transmission system including the respondent's own use of its transmission system. This information will aid the Commission in evaluating the adequacy of existing traditional cost-based rates.

Comments Received

72. EEI indicates the electric transmission peak load schedule cannot be prepared within the timeframe that FERC is proposing, and the use of estimates will be required. Additionally, the breakdown of the system peak load into statistical classifications will tend to be subjective because there is no guidance on methodology which will result in inconsistent submissions by FERC respondents.

Commission Response

73. As previously mentioned, the Commission is modifying the filing dates for the FERC Annual Reports and

[46] *See, e.g.*, AEP at 3; AGA at 5; Cinergy at 5; EEI at 7; PSEG at 10; and San Diego at 4.

[47] *See* Chevron at 3; Gulf South at 6; and Kinder Morgan at 15.

[48] *See* Arizona at 8 and EEI at 23.

the quarterly financial reports. The changes in the filings dates should provide respondents with sufficient time to collect and report the required information.

74. Also, the Commission notes that monthly transmission system peak loads are measurable, not subjective. As guidance on methodology, the Commission clarifies that each of these peak loads are the Monthly Transmission System Peak as defined in the pro-forma Open Access Transmission Tariff. The value in the statistical classifications listed below the monthly peak should reflect each classification's contribution to the firm Monthly Transmission System Peak. In this regard, the Commission clarifies that the line labeled "Non-Firm Service" will be deleted, because non-firm service does not contribute to firm peak load. The Commission also clarifies this schedule will be included in the quarterly financial reports and the FERC Annual Report Nos. 1 and 1–F. If a respondent finds the use of estimates is necessary to complete the schedule, the respondent must indicate this fact on the schedule and fully describe the estimation methodology in a footnote.

4. Statistical Classifications

75. As part of the revisions to the FERC Annual Report Nos. 1 and 1–F, the Commission proposed to update the statistical classifications for the Schedule of Transmission of Electricity for Others, and for the Schedule of Transmission by Others, to reflect open access transmission established by Order No. 888.[49]

Comments Received

76. EEI states that the changes add new statistical classifications. EEI interprets the report to require a separate line for each customer, for each type of service taken, and for each transmission path used. EEI requests guidance for netting groups of customers, or for materiality thresholds, and contend that a literal interpretation of the proposal could result in thousands of lines of data.

Commission Response

77. The Commission notes that collection of the data fields on this page has been required in the FERC Annual Report No. 1 for years, and that the new, additional statistical classifications reflect service categories available under the pro-forma Open Access Transmission Tariff.

78. Clearly, the volume of data will vary by respondent. However, in cases of actual extreme volume, aggregation of data by logical criteria may be acceptable if the method of aggregation is clearly footnoted. In all cases, the respondent should keep a complete electronic copy of the disaggregated data.

5. Selected Fourth Quarter Data in FERC Annual Reports

79. The Commission proposed to break out certain fourth quarter account data for certain income statement accounts reported in the FERC Annual Reports. The Commission proposed that the revenue and expense account data be shown in two new columns, one column for the current quarter and a second column for the same quarter of the previous year.

Comments Received

80. Some commenters urge the Commission to eliminate the requirement to separately display fourth quarter data in the FERC Annual Reports. They argue that the requirement is more onerous than the SEC's requirement since the SEC requires only three quarters and one annual report, and there is no SEC requirement to analyze the fourth quarter separately. They also state that the FERC Annual Report should coincide with SEC reporting requirements for selected quarterly financial data to be presented in the financial notes.[50]

Commission Response

81. The Commission will not adopt the proposal requiring respondents to separately report certain fourth quarter income statement data in the FERC Annual Reports. Pursuant to this Final Rule, the Commission will require respondents to file three quarterly financial reports and a FERC Annual Report that reports on the account balances and activity for the entire year. The Commission's existing information technology has the ability to generate any needed internal special reports detailing selected fourth quarter activity for the purpose of review and evaluation. Therefore, the Commission finds that there is no need to burden respondents with separately displaying fourth quarter data in the FERC Annual Reports.

D. Corporate Officer Certification

82. Under the Commission's existing certification procedures, a company officer must sign a certification stating that he or she has examined the FERC Annual Report and to the best of his or her knowledge and belief, the statements contained in the FERC Annual Report are true. The Commission proposed to update the corporate officer certification language contained in the FERC Annual Report, and to include the updated language in the quarterly financial reports. The new corporate officer certification was proposed in response to recent changes in corporate governance practices. This update was proposed to improve the reliability of the financial information filed with the Commission.

83. A recent review of the FERC Annual Reports filed for the calendar year 2002 indicated inconsistencies in the level of management certifying the reports.[51] The level of management that certify the FERC Annual Reports ranged from assistant controllers, controllers, chief financial officers, or individuals at a higher level within the organization. Therefore, in order to provide uniformity of accountability for jurisdictional entities, the Commission proposed that the principal executive officer of the jurisdictional entity and the principal financial officer of the jurisdictional entity, and or persons performing similar functions for the jurisdictional entity certify the annual and quarterly financial reports. The certification required these corporate officers to state they reviewed the report, were responsible for the content of the report, and were responsible for establishing, maintaining, and evaluating internal controls and procedures.

Comments Received

84. In general, none of the commenters object to the Commission continuing to require corporate officers to certify the FERC Annual Report or quarterly financial report. APGA specifically describes the corporate officer certification as a necessity, and specifically supports the content of the certification. However, many commenters express concern over various aspects of the proposed corporate officer's certification. These comments range from the administrative

[49] Under the Uniform System of Accounts prescribed for Public Utilities and Licensees, revenues from transmission of electricity of others over transmission facilities of the respondent are recorded in Account 456, Other electric revenues, and amounts payable to others for the transmission of the respondent's electricity over transmission facilities owned by others are recorded in Account 565, Transmission of electricity by others.

[50] *See, e.g.*, DE at 5; FPL at 6 and Gulfterra at 4.

[51] *See, e.g.*, AEP Generating Company, FERC Annual Report No.1; Alliance Pipeline, L.P., FERC Annual Report No. 2; Belle Forche Pipeline Company, FERC Annual Report No. 6; Guardian Pipeline, LLC, FERC Annual Report No. 2; Kansas Gas and Electric Company, FERC Annual Report No. 1 and Seminole Creek, Ltd., FERC Annual Report No. 6.

burden associated with the level of corporate officers who are required to certify the financial report, to the content of the corporate officer's certification statement. These commenters request the Commission continue to use the current certification or to make certain modifications to the NOPR to clarify the certification requirements.[52]

85. Commenters urging the Commission to retain the current certification language argue that applying the Sarbanes-Oxley corporate officer certification standards to FERC Annual and quarterly financial reports would be a misapplication of the Sarbanes-Oxley standards because the Sarbanes-Oxley standards are intended to protect public investors.[53] Other commenters request that the Commission keep the current corporate officer certification because some of the language used in the proposed corporate officer certification statement does not apply to FERC respondents that are not publicly traded entities. Specifically, these commenters argue that references in the proposed corporate officer certification to audit committees and subsidiaries are inappropriate for certain FERC respondents.[54] AOPL states that most wholly-owned subsidiaries or privately held companies do not have an Audit Committee or equivalent position. AOPL argues that in order to make such a certification, FERC respondents that are wholly-owned subsidiaries or privately held companies will need to establish a position equivalent to an Audit Committee and to educate members of such an Audit Committee about the Uniform System of Accounts and FERC reporting requirements.

86. Other commenters request the Commission to use "disclosure controls and procedures" instead of "internal controls." [55] Hampshire is concerned because the NOPR uses the terms "internal controls" and "disclosure controls and procedures" interchangeably. PacifiCorp seeks clarification on the definition of internal controls that is used in the proposed corporate officer certification statement. PacifiCorp defines "disclosure controls and procedures" as controls and procedures designed to ensure that information required to be disclosed in reports under the Securities Exchange Act of 1934 ("Exchange Act") is accumulated and communicated to the issuer's management, as appropriate to allow timely decisions regarding disclosure. In addition, PacifiCorp refers to Section 404 of the Sarbanes-Oxley Act, annual reports for investors contain an internal control report describing the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and an assessment of the effectiveness of the controls.

87. Additionally, Gulf South seeks clarification of the specific officers required to certify the FERC annual and quarterly financial reports. Gulf South states that the specific certification language is confusing and requests that the Commission clarify the language. Some commenters request a definition for a materiality standard for the corporate officer certification.[56] Still other commenters describe the corporate officer certification as duplicative of the SEC corporate officer certification, and some commenters request the Commission to use the current SEC corporate officer certification.[57]

88. Additionally, some commenters express specific concern about the administrative burden associated with the corporate officer certification. Specifically, commenters argue that since the FERC annual and quarterly financial reports contain so much more detail than a GAAP or SEC financial report, the burden on the corporate officers to certify the FERC Annual and quarterly financial reports is clearly unreasonable.[58] Other commenters express concern about the costs associated with educating officers about the accounting rules under Uniform System of Accounts.[59]

89. PacifiCorp requests the corporate officer certification statement be clarified to refer only to the respondent's overall financial condition and risk. PacifiCorp argues that it will be unduly burdensome for the Commission to require certification of individual account balances.

Commission Response

90. In order to strengthen the reliability of the financial data submitted to the Commission in the FERC Annual Reports and quarterly financial reports, the Chief Financial Officer or an individual performing that function will be required to certify these reports. The Commission views the officer certification requirement as an important part in the corporate governance process. Since the CFO is generally the corporate executive that directs all of the financial aspects of a company, the Commission views this level of management as the appropriate individual to attest to the financial information contained in the report. Senior level management involvement in the preparation and review of the quarterly financial reports and the FERC Annual Reports is essential to the process of respondents providing reliable financial information to the Commission.

91. As more fully discussed below, the Commission will use its existing corporate officer certification in the quarterly financial reports, and will use the more expansive corporate officer certification statement as proposed in the NOPR, with certain modifications, in the FERC Annual Reports.

1. Quarterly Financial Reports

92. As previously mentioned, the Commission proposed the same expansive corporate officer certification be used for both the quarterly financial report, and the FERC Annual Report. However, the Commission agrees with commenters that using the existing corporate officer certification statement for the quarterly financial report will alleviate the administrative burden cited by commenters while still maintaining a level of reliability appropriate for quarterly financial reports. The Commission will use the following corporate officer certification in the quarterly financial reports. The Chief Financial Office will sign the certification.

> I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

2. FERC Annual Reports

93. The Commission is modifying the corporate officer certification as proposed in the NOPR for the FERC Annual Report based upon the comments received. As discussed below, the Commission will define internal accounting control for purposes of its corporate officer certification, require only the chief financial officer to certify the report, make specific reference to the Commission's Uniform Systems of Accounts, and make other minor changes to the certification language.

[52] *See, e.g.*, BP at 9; Plains at 6 and 7; AOPL at 12; Kinder Morgan at 14; PacifiCorp at 9 and 10; INGAA at 26; EEI at 5.

[53] *See* EEI at 20.

[54] *See* AOPL at 12 and Hampshire at 5.

[55] *See* PacifiCorp at 10 and Hampshire at 5.

[56] *See* Williams at 4 and NiSource at 17.

[57] *See, e.g.*, INGAA at 26; Arizona at 7 and Kinder Morgan at 14.

[58] *See, e.g.*, INGAA at 26; Plains at 6; Kinder Morgan at 14 and Shell Pipeline at 13.

[59] *See* Plains at 6 and Shell Pipeline at 13.

94. In order to provide clarification, the Commission will replace the phrase "internal controls" with "internal accounting controls." The Commission's use of "internal accounting controls" in the corporate officer certification will refer to the accounting policies, procedures, and systems that are sufficient to provide reasonable assurance that the financial statement schedules contained in the quarterly and annual reports conform in all material aspects with the Commission's Uniform System of Accounts and related regulations.

95. The Commission is of the view that respondents should have sufficient accounting controls in place at a level acceptable in order to provide reasonable assurance that the financial information contained in the report conforms in all material respects with the Commission's Uniform Systems of Accounts and related regulations. While the Commission notes that this may add some additional burden for respondents, the Commission views the certification as a necessity in order to ensure the reliability of the information presented in the report.

96. The Commission agrees with commenters that it may be unduly burdensome to require multiple corporate officers to certify the FERC Annual Reports and quarterly financial reports. Therefore, the Commission will only require the CFO or a person performing similar functions to certify the reports. The Commission notes that many CFOs already certify the FERC Annual Report and, therefore, requiring this level of management to certify the reports should not present an undue burden on respondents.[60]

97. The Commission will not use identical SEC language for its corporate officer certification requirements. The SEC's corporate officer certification is based upon the Exchange Act and subsequent SEC regulations. As previously noted in this Final Rule, many FERC jurisdictional companies are not subject to SEC regulations. Additionally, the SEC corporate officer certification addresses financial statements prepared in accordance with generally accepted accounting principles (GAAP) while the FERC Annual Reports are based on the Commission's Uniform System of Accounts.

98. The Commission will clarify that it did not propose that respondents file a management internal control report in the NOPR, and it is not a requirement of this Final Rule. Apparently there was some confusion among commenters due to the language used in the NOPR issued by the Commission on June 26, 2003, and the SEC's Release on Management's Internal Control Report issued on June 5, 2003. This SEC Release required companies to file an internal control report containing a management opinion on their internal controls.

99. The Commission is also eliminating the requirement to have multiple officers certify the quarterly and annual reports. The Commission will only require the updated certification for the financial statements and notes to the financial statements. The Commission will keep the current certification language to address matters reported in the other schedules contained in the FERC Annual Reports.

100. The corporate officer certification contained in the FERC Annual Reports will read as follows:

> The undersigned officer certifies that:
>
> I have read this FERC Annual Financial Report:
>
> Based on my knowledge this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances such statements were made, not misleading with respect to the period covered by this report.
>
> Based on my knowledge the financial statements, and other financial information (Comparative Balance Sheet, Statement of Income for the Year, Statement of Retained Earnings for the Year, Statement of Cash Flows, Statement of Accumulated Comprehensive Income and Hedging Activities, and Notes to the Financial Statements) included in this report conform in all material respects with the Commission's Uniform System of Accounts, as of, and for, the periods presented in this report.
>
> I am responsible for establishing and maintaining internal accounting controls as defined by the Commission. I have designed such internal accounting controls to ensure that material information relating to the respondent and its subsidiaries, to the extent that the respondent has subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared. I have evaluated the effectiveness of the internal accounting controls as of a date within 90 days prior to the period in this report (evaluation date). I have presented in this report my conclusions about the effectiveness of the internal accounting controls based on my evaluation as of the evaluation date.
>
> I have disclosed, based on my most recent evaluation, to the respondent's auditors and the audit committee or persons performing similar functions, to the extent that the respondent has an audit committee or persons performing similar functions, that all significant deficiencies in the design or operation of internal accounting controls which could adversely affect the respondent's ability to record, process, summarize and report financial data and have identified for the respondent's auditors any material weaknesses in disclosure controls and procedures and any fraud, whether or not material, that involves management or other employees who have a significant role in the respondent's internal accounting controls.
>
> I have indicated in this report whether or not there were significant changes in internal accounting controls and procedures or in other factors that could significantly affect internal accounting controls and procedures subsequent to the date of my most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.
>
> In addition, I have examined the remaining schedules contained in this report, to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

E. Miscellaneous Matters

1. Fiscal Year Reporting

101. PacifiCorp urges the Commission to adopt the same fiscal annual and quarterly reporting requirements implemented by the SEC. PacifiCorp requests that the Commission clarify that it will recognize fiscal year reporting. It also requests the Commission allow such entities to file their FERC quarterly financial reports after the end of each fiscal quarter because it asserts that having parallel filing schemes and timelines with the SEC will ease administrative burden on utilities filing financial reports with both the Commission and the SEC. Finally, PacifiCorp is concerned that if the Commission does not allow fiscal year reporters to file on a fiscal year basis, they will violate SEC fair disclosure rules. They argue that under the NOPR's filing dates they will be filing fourth quarter earnings under the FERC requirements before they are required to do so under the SEC rules.

102. The Commission does not permit fiscal year respondents to file FERC Annual Reports on a fiscal year basis. The Commission requires these respondents to file on a calendar year in order to maintain a uniform basis of information collected from respondents filing the FERC Annual Report and quarterly financial reports for purposes of compiling data and making comparisons. Therefore, the financial information reported in the quarterly financial reports must be synchronized with the FERC Annual Reports which are presented on a calendar year to date basis. Finally, in light of the

[60] *See, e.g.*, Avista Corp., FERC Annual Report No. 1; MIGC, Inc. FERC Annual Report No. 2 and Rocky Mountain Pipeline System LLP, FERC Annual Report No. 6.

modifications to the quarterly and annual report filing dates in this Final Rule, the Commission finds that FERC respondents will not be reporting financial information ahead of the filings made with the SEC and therefore fiscal year FERC respondents will not violate the SEC's fair disclosure rules.

2. Expand Data Collection in FERC Annual Reports

103. The Commission also received requests from some commenters to expand the content of data and information collected in the FERC Annual Report Nos. 2 and 2A. These commenters urge the Commission to expand the financial information collected on such items as miscellaneous current and accrued liabilities, revenues from gathering, transmission and storage, miscellaneous general expenses, outside services employed, and to increase the record retention and availability of transactional activity. These commenters also urge the Commission to change the FERC Annual Reports to include information on the respondent's rate base, costs, and revenues, and provide additional disclosures on capital structure.[61] The Commission will not act on these recommendations in the Final Rule because these changes are outside the scope of the proposal.

3. Requests for a Technical Conference

104. Some commenters urge the Commission to schedule a technical conference to allow for further dialogue and industry participation before issuing a Final Rule.[62] However, the comments submitted by FERC jurisdictional entities, industry associations, state regulatory bodies, and others were detailed and comprehensive. The Final Rule contains significant modifications from the NOPR based upon the comments received. Therefore, the Commission declines to hold a technical conference before issuing the Final Rule. If respondents have questions regarding reporting matters contained in this Final Rule, they should submit those questions to the Chief Accountant as provided for in the Commission's Uniform Systems of Accounts, and related regulations.

105. This Final Rule is the result of an exhaustive and collaborative process among all stakeholders. The Commission believes it is appropriate to assess the adequacy and costs of these new reporting requirements. To this end, the Commission directs staff to determine if any improvements should be made to the new quarterly and annual financial reporting requirements. This review will be undertaken after a full reporting cycle, and notice and comment, with a staff report to the Commission.

F. Elimination of the Cash Management Notification Reports

106. On October 23, 2003, the Commission in Order No. 634–A, issued a Final Rule on the regulation of cash management practices.[63] As part of Order No. 634–A the Commission requires respondents participating in cash management programs, and who are not electric cooperatives, to determine on a quarterly basis the percentage of their capital structure that constitutes proprietary capital, and in the event the ratio is less than thirty percent the entity must notify the Commission within 45 days after the end of each calendar quarter.

107. Respondents are required to describe the significant events or transactions causing the entity's proprietary capital to drop below thirty percent, and the extent to which the entity has amounts loaned or money advanced to its parent, subsidiary, or affiliated companies through its cash management program(s) must be reported, along with plans, if any, to regain at least a thirty percent proprietary capital. Finally, the respondent must notify the Commission within 45 days after the end of the calendar quarter when the entity's proprietary capital subsequently returns to, or exceeds, thirty percent.

108. The Commission finds the quarterly financial reports in this Final Rule provide the Commission with the financial information necessary to determine the extent to which a FERC-jurisdictional entity's proprietary capital is less than thirty percent at the end of each quarter. Therefore, in order to minimize the reporting burden on FERC jurisdictional entities, the Commission will eliminate the separate filing requirement contained in §§ 141.500, 260.400, and 357.500 of the Commission's regulations. The Commission finds that the informational requirements concerning the significant events or transactions causing the proprietary capital ratio to drop below thirty percent, along with the respondent's plans, if any, to regain at least a thirty percent proprietary capital ratio, and the extent to which the entity has amounts loaned or advanced to its parent, subsidiary or affiliate through its cash management program(s) must be reported in the Important Changes During the Quarter, and Important Changes During the Year schedule contained in the respective quarterly financial reports, and FERC Annual Reports.

IV. Regulatory Flexibility Act Certification

109. The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[64] The Commission is not required to make such analyses if a rule would not have such an effect.

110. The Commission concludes that this Final Rule would not have such an impact on small entities. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity, and the data required by this rule are already being captured by their accounting systems. However, if the recordkeeping requirements represent an undue burden on small businesses, the entity affected may seek a waiver from the Commission.

V. Environmental Impact Statement

111. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[65] The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental impact statement.[66] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.[67] This Final Rule updates parts 141, 260, 357 and 375 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated.

[61] *See* Missouri PSC at 5 through 8 and IC's Attachment.

[62] *See, e.g.*, AOPL at 27 and 28; EEI at 6; FirstEnergy at 7 and ISO/RTO Council at 17.

[63] *See* Regulation of Cash Management Practices, RM02–14–000, NOPR issued on August 1, 2002, 67 FR 51150 (Aug. 7, 2002), IV FERC Stats. & Regs. ¶ 32,561 (Aug. 1, 2002), Interim Order No. 634 issued on July 8, 2003, 68 FR 40500 (July 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003) and Order No. 634–A issued on October 23, 2003, 68 FR 61993 (Oct. 31, 2003), III FERC Stats. & Regs. ¶ 31,152 (Oct. 23, 2003).

[64] *See* 5 U.S.C. 601–612 (2000).

[65] *See* Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[66] *See* 18 CFR 380.4 (2003).

[67] *See* 18 CFR 380.4(a)(2)(ii) (2003).

Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

112. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[68] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. In accordance with Section 3560(d) of the Paperwork Reduction Act of 1995,[69] the information collection requirements in the rulemaking were submitted to OMB for review.

113. As the Commission states in the NOPR, the compliance burden of this Final Rule will be minimal for jurisdictional entities because it is standard accounting practice for companies to compile and summarize accounting transactions on a monthly basis under the Commission's existing accounting regulations. Additionally, it is standard accounting and reporting practice for publicly-held corporations to prepare financial statements on quarterly and annual basis for their stockholders and the SEC. Privately-held companies also prepare quarterly financial statements so that their financial condition and results of operations may be understood by selected creditors and their owners. The Commission projected that the total number of hours that each respondent would require to complete the quarterly reports is approximately 72 hours per year.

114. The Commission estimated in the NOPR that most of the administrative burden associated with the proposal would result from respondents completing the MD&A schedule, preparing notes to the quarterly financial statements, performing the necessary review procedures for the corporate officers certification, and filing the reports within the prescribed time frames. As more fully discussed below, the modifications made to the original proposal should result in a substantial decrease in the administrative burden placed on jurisdictional entities.

Comments Received

115. Many commenters disagree with the Commission's administrative burden estimate citing the time required to prepare an MD&A, as proposed in the NOPR, to prepare a complete set of notes to the financial statements, and to obtain multiple corporate officers' certifications, and the additional staffing needed to compile, prepare, and file the reports within the time frames specified.

116. INGAA states that the preparation of an MD&A and the notes to the financial statements, as proposed in the NOPR, would account for over 50 percent of the projected cost of compliance with rule. AOPL states that for privately held companies that do not currently prepare an MD&A schedule the quarterly burden would be 220 hours with an additional 80 hours added to the annual report.

117. Additionally, many commenters expressed concern about the proposed Corporate Officer Certification. EEI states that the internal officer certification would take an average of 13.3 hours for the quarterly reports and 13.6 hours for the FERC Annual Reports. However, SCE estimated that it would take their company 50 hours to complete the corporate officer's certification.

118. Finally, commenters express concern over the administrative burden resulting from accelerating the filing dates of the annual reports and the proposed filing dates for the quarterly reports. Most commenters state that it would take additional staffing to concurrently prepare quarterly and annual reports for the SEC and for the FERC. While not providing specific burden hours resulting from the proposed filing dates of the quarterly and annual reports, INGAA state that by changing the filing deadlines forty percent of their compliance costs would be reduced.

Commission Response

119. The modifications made in this Final Rule will significantly reduce or eliminate the administrative burden cited by commenters. The elimination of the requirement for respondents to prepare an MD&A schedule as proposed in the NOPR, and the use of abbreviated notes the financial statements that only discuss significant changes from the prior year's notes, will significantly reduce or eliminate the alleged administrative burden on respondents.

120. Additionally, in response to the administrative burden raised by respondents due to concurrent SEC and FERC filing dates, the Commission is extending the filing dates for FERC Annual Reports and quarterly financial reports as proposed in the NOPR. Finally, the Final Rule modifies the corporate officer certification statement, and only requires the Chief Financial Officer to certify the quarterly and annual reports.

121. As a result of these modifications, the Commission estimates that the reporting requirements for the quarterly financial report Nos. 3–Q and 6–Q, and increased reporting requirements for the FERC Annual Report Nos. 1, 1–F, 2, 2–A, and 6 contained in this Final Rule are as follows:

	Data collection form	Number of respondents	Number of hours	Filing periods	Total annual hours
	(a)	(b)	(c)	(d)	(e)=(b)×(c)×(d)
1	FERC Form 3–Q	353	150	3	158,850
2	FERC Form 6–Q	159	150	3	71,550
3	FERC Form 1	216	75	1	16,200
4	FERC Form 1–F	27	75	1	2,025
5	FERC Form 2	57	75	1	4,275
6	FERC Form 2–A	53	75	1	3,975
7	FERC Form 6	159	75	1	11,925
8	Totals				268,800

[68] *See* 5 U.S.C. 601–612 (2000).

[69] *See* 44 U.S.C. 3507(d) (2000).

Total Annual Hours for Collection:
(Est. Reporting + Recordkeeping, [if appropriate)) = 268,800.

122. In conclusion, the Final Rule contains significant changes to the NOPR and thereby has significantly reduced the administrative burden cited by the commenters. However, respondents will incur some additional administrative burden in providing supplemental financial information to the Commission as a result of this Final Rule. As recent events regarding the impact of inappropriate accounting and financial reporting and recent changes in corporate governance practices have clearly demonstrated, the additional administrative burden placed on respondents is far outweighed by the benefits the Commission will obtain from receiving financial information from respondents that that is transparent, timely, relevant, and reliable.

VII. Document Availability

123. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Web site *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

124. From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

125. User assistance is available for eLibrary and other aspects of the FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

VIII. Effective Date and Congressional Notification

126. This Final Rule will take effect March 29, 2004. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[70] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[71]

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 141, 260, 357, and 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 141.1, paragraph (b) (2) is revised to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees, and others.

* * * * *

(b) *Filing requirements.* * * *

(2) *When to file and what to file.* (i) The annual report for the year ending December 31, 2004, must be filed on April 25, 2005.

(ii) The annual report for each year thereafter must be filed on April 18.

(iii) This report must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in this form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter is required.

■ 3. In § 141.2, paragraph (b) (2) is revised as follows:

§ 141.2 FERC Form No. 1–F, Annual report for Nonmajor public utilities and licensees.

* * * * *

(b) *Filing requirements.* * * *

(2) *When to file.* (i) The annual report for the year ending December 31, 2004, must be filed on April 25, 2005.

(ii) The annual report for each year thereafter must be filed on April 18.

■ 4. Section 141.400 is added to read as follows:

§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

(a) *Prescription.* The quarterly report of electric utilities, licensees, and natural gas companies, designated as FERC Form No. 3–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file*—(i) *Generally.* Each electric utility (as defined in part 101 of subchapter C of this chapter) and other entity, *i.e.* each corporation, person, or licensee as defined in Section 3 of the Federal Power Act (16 U.S.C. 792 *et. seq.*), including any agency or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, must prepare and file with the Commission FERC Form No. 3–Q pursuant to the General Instructions set out in that form.

(ii) *Exceptions.* This report form is not prescribed for any agency, authority or instrumentality of the United States, nor is it prescribed for municipalities as defined in section 3 of the Federal Power Act; (*i.e.* a city, county, irrigation district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power).

(2) Each major public utility and licensee must file the quarterly financial report form as follows:

(i) The quarterly financial report for the period January 1 through March 31, 2004, must be filed on or before July 9, 2004.

(ii) The quarterly financial report for the period April 1 through June 30, 2004, must be filed on or before September 8, 2004.

(iii) The quarterly financial report for the period July 1 through September 30, 2004, must be filed on or before December 9, 2004.

(iv) Subsequent quarterly financial reports must be filed within 60 days from the end of the reporting quarter.

[70] *See* 5 U.S.C. 804(2) (2000).

[71] *See* 5 U.S.C. 801(a)(1)(A) (2000).

(3) Nonmajor public utilities and licensees must file the quarterly financial report form as follows:

(i) The quarterly financial report for the period January 1 through March 31, 2004, must be filed on or before June 23, 2004.

(ii) The quarterly financial report for the period April 1 through June 30, 2004, must be filed on or before September 22, 2004.

(iii) The quarterly financial report for the period July 1 through September 30, 2004, must be filed on or before December 23, 2004.

(iv) Subsequent quarterly financial reports must be filed within 70 days from the end of the reporting quarter.

(4) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the quarterly financial report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the quarterly financial report ending March 31, 2004, due on or before July 9, 2004 for major public utilities and licensees, and due on or before July 23, 2004 for nonmajor public utilities and licensees.

■ 5. In § 141.500, paragraphs (b), (c) and (d) are removed, the paragraph designation for paragraph (a) is removed, and the section heading is revised to read as set forth below:

§ 141.500 Cash management programs.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 6. The authority citation for part 260 continues to read as follows:

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

■ 7. In § 260.1, paragraph (b) is revised as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies.

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act (15 U.S.C. 717, *et seq.*) which is a major company (a natural gas company whose combined gas transported or stored for a fee exceed 50 million Dth in each of the three previous calendar years) must prepare and file with the Commission, as follows:

(1) The annual report for the year ending December 2004 must be filed on April 25, 2005.

(2) The annual report for each year thereafter must be filed on April 18 of the subsequent year.

(3) Newly established entities must use projected data to determine whether FERC Form No. 2 must be filed.

(4) The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

■ 8. In § 260.2, paragraph (b) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual reports for Nonmajor natural gas companies.

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act, not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, must prepare and file with the Commission, as follows:

(1) The annual report for the year ending December 2004 must be filed on April 25, 2005.

(2) The annual report for each year thereafter must be filed on April 18 of the subsequent year.

(3) Newly established entities must use projected data to determine whether FERC Form No. 2–A must be filed.

(4) The form must be filed in electronic format only, as indicated in the General Instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

■ 9. Section 260.300 is added to read as follows:

§ 260.300 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

(a) *Prescription.* The quarterly report for electric utilities, licensees, and natural gas companies, designated herein as FERC Form No. 3–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file.* Each natural gas company, (as defined in the Natural Gas Act (15 U.S.C. 717, *et. seq.*) must prepare and file with the Commission a FERC Form No. 3–Q pursuant to the General Instructions set out in that form.

(2) Each Major natural gas company must file this quarterly financial report form as follows:

(i) The quarterly financial report for the period January 1 through March 31, 2004, must be filed on or before July 9, 2004.

(ii) The quarterly financial report for the period April 1 through June 30, 2004, must be filed on or before September 8, 2004.

(iii) The quarterly financial report for the period July 1 through September 30, 2004, must be filed on or before December 9, 2004.

(iv) Subsequent quarterly financial reports must be filed within 60 days from the end of the reporting quarter.

(3) Each Nonmajor natural gas company must file a quarterly financial report as follows:

(i) The quarterly financial report for the period January 1 through March 31, 2004, must be filed on or before July 23, 2004.

(ii) The quarterly financial report for the period April 1 through June 30, 2004, must be filed on or before September 22, 2004.

(iii) The quarterly financial report for the period July 1 through September 30, 2004, must be filed on or before December 23, 2004.

(iv) Subsequent quarterly financial reports must be filed within 70 days from the end of the reporting quarter.

(4) This report must be filed as prescribed in § 385.2011 of this chapter as indicated in the General Instructions set out in the quarterly financial report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the quarterly financial report ending March 31, 2004, due on or before July 9, 2004 for major natural gas companies, and due on or before July 23, 2004 for nonmajor natural gas companies. One copy of the report must be retained by the respondent in its files.

■ 10. In § 260.400, paragraphs (b), (c) and (d) are removed, the paragraph designation for paragraph (a) is removed, and the section heading is revised to read as set forth below:

§ 260.400 Cash management programs.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 11. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 12. In § 357.2, paragraph (b) is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual report of oil pipeline companies.

* * * * *

(b) *When to file.* (1) The annual report for the year ending December 31, 2004, must be filed on April 25, 2005.

(2) The annual report for each year thereafter must be filed on April 18 of the subsequent year.

* * * * *

■ 13. Section 357.4 is added to read as follows:

§ 357.4 FERC Form No. 6–Q, Quarterly report of oil pipeline companies.

(a) *Prescription.* The quarterly financial report form of oil pipeline companies, designated as FERC Form No. 6–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file.* Each oil pipeline company, subject to the provisions of section 20 of the Interstate Commerce Act, must prepare and file with the Commission FERC Form No. 6–Q.

(2) *When to file and what to file.* This quarterly financial report form must be filed as follows: .

(i) The quarterly financial report for the period January 1 through March 31, 2004, must be filed on or before July 23, 2004.

(ii) The quarterly financial report for the period April 1 through June 30, 2004, must be filed on or before September 22, 2004.

(iii) The quarterly financial report for the period July 1 through September 30, 2004, must be filed on or before December 23, 2004.

(iv) Subsequent quarterly financial reports must be filed within 70 days from the end of the reporting quarter.

(v) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the quarterly report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the reporting quarter ending March 31, 2004, due on or before July 23, 2004.

■ 14. In § 357.5, paragraphs (b), (c) and (d) are removed, the paragraph designation for paragraph (a) is removed, and the section heading is revised to read as set forth below:

§ 357.5 Cash management programs.

PART 375—THE COMMISSION

■ 15. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 16. In § 375.303, paragraphs (d) and (e) are added to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(d) Accept for filing Quarterly Financial Report Form Nos. 3–Q and 6–Q if such filings are in compliance with Commission orders or decisions, and when appropriate, notify the party of such acceptance.

Issue and sign deficiency letters if the filing fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted.

(e) Deny or grant, in whole or in part, requests for waiver of the reporting requirements for the forms under §§ 141.400, 260.300, and 357.400 of this chapter and the filing of these forms on electronic media under § 385.2011 of this chapter.

Note: The following appendices will not be published in the Code of Federal Regulations.

APPENDIX A: LIST OF COMMENTERS

	Company name	Abbreviation
1	American Electric Power Company, Inc	AEP.
2	American Gas Association	AGA.
3	American Public Gas Association	APGA.
4	Arizona Public Service Company	Arizona.
5	Association of Oil Pipe Lines	AOPL.
6	BP Pipelines (North America), Inc	BP.
7	Chevron Texaco Pipelines	Chevron.
8	Cinergy Companies	Cinergy.
9	Colonial Pipeline Company	Colonial.
10	ConocoPhilips Company	Conoco.
11	Connexus Energy and Walton Electric Membership	Connexus.
12	Consolidated Edison Inc	ConEd.
13	Consumers Energy Company	CE.
14	Deloitte & Touche	D&T.
15	Detroit Edison Company	Detroit Ed.
16	Dominion Resources Inc	Dominion.
17	Duke Energy Corporation	Duke.
18	Dynegy NGL Pipeline Company LLC	Dynegy.
19	Edison Electric Institute	EEI.
20	El Paso Corporation's Pipeline Group	El Paso.
21	Empire District Electric Company	Empire.
22	Entergy Corporation	Entergy.
23	Enterprise Products Operating L.P	EPO.
24	ExxonMobil Pipeline Company	Exxon.
25	FirstEnergy Corp	FirstEnergy.
26	Florida Power & Light	FP&L.
27	Genesis Pipeline USA L.P	Genesis.
28	Graham County Electric Cooperative, Inc	Graham.
29	Gulfterra Energy Partners, L.P	Gulfterra.
30	Gulf South Pipeline Company LP	Gulf South.
31	Hampshire Gas Company	Hampshire.
32	Independent System Operator/Regional Transmission Organizational Council	ISO/RTO Council.
33	Industry Coalition	IC.
34	Inland Power & Light	Inland.

APPENDIX A: LIST OF COMMENTERS—Continued

	Company name	Abbreviation
35	International Transmission Company	ITC.
36	Interstate Natural Gas Associations America	INGAA.
37	Iroquois Gas Transmission System, L.P	Iroquois.
38	Kelso Beaver Pipeline Company	Kelso.
39	KeySpan Corporation	KeySpan.
40	Kinder Morgan Liquids Pipeline	Kinder Morgan.
41	Koch Pipeline Company, L.P	Koch.
42	Maine Public Service Company	MPSC.
43	MidAmerican Energy Company	MidAmerica.
44	Missouri Public Service Commission	Missouri PSC.
45	National Association of Regulatory Utility Commissioners	NARUC.
46	National Grid USA	National Grid.
47	National Rural Electric Cooperative Association	NRECA.
48	National Rural Utilities Cooperative Finance Corp	NRUCFC.
49	NiSource Inc	Nisource.
50	Northeast Utilities	NU.
51	Northern Natural Gas Company	Northern Natural.
52	Old Dominion Electric Cooperative	Old Dominion.
53	Otter Tail Power Company	Otter Tail.
54	PacificCorp	PacificCorp.
55	Pepco Holdings Inc	Pepco.
56	Plains All American Pipeline LP	Plains.
57	Portland General Electric Company	Portland General.
58	PricewaterhouseCoopers LLP	PWC.
59	PSEG Companies	PSEG.
60	Rayburn County Electric Cooperative Inc	Rayburn.
61	San Diego Gas & Electric Company	San Diego.
62	SCANA Corp	SCANA.
63	Shell Gas Transmission LLC	Shell Gas.
64	Shell Pipeline Company LP's	Shell Pipeline.
65	Southern California Edison	SCE.
66	Southern Company	Southern.
67	Sunoco Pipeline L.P.	Sunoco.
68	Texas Gas Transmission, LLC	Texas Gas.
69	Tucson Electric Power Company	Tucson.
70	Unocal Pipeline Company	Unocal.
71	USG Pipeline Company	USG.
72	Williams Pipe Line Company, LLC	Williams.
73	Williston Basin Interstate Pipeline	Williston Basin.
74	Wolverine Power Supply Corporative	Wolverine.

BILLING CODE 6717–01–P

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Appendix B: Form 3-Q and 6-Q Samples

Form Approved
OMB No. _____
(Expires Month/Day/Year)

THIS FILING IS:
___ An Initial (Original) Application or ___ Resubmission No.____
RESPONDENT IS: ____(E) Electric Utility, Licensee ____(G) Natural Gas Company

FERC FORM No. 3-Q: QUARTERLY FINANCIAL REPORT OF ELECTRIC UTILITIES, LICENSEES, AND NATURAL GAS COMPANIES

This report is mandatory under the Federal Power Act, Sections 3, 4(a), 304, 309, and 18 CFR 141.400, for public utilities and licensees, and under the Natural Gas Act, Sections 10(a), 16, and 18CFR 260.300, for natural gas companies. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

Exact Legal Name of Respondent (Company)	For The Quarter Ending
_____	____Month/Day/Year

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LIST OF SCHEDULES

Enter in columns (a) and (b) the terms "none," "not applicable," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none" or "not applicable".

Line No.	Title of Schedule	Page No.	Electric Utility, Licensee (a)	Natural Gas Company (b)
1	General Information	4-5		
2	Excerpts From the Law and General Penalties	6-7		
3	General Instructions	8		
4	Identification	9		
5	Officer Certification	10		
6	Important Changes During the Quarter	11		
7	Comparative Balance Sheet	12-16		
8	Statement of Income and Retained Earnings	17-21		
10	Statement of Cash Flows	22-24		
11	Statement of Accumulated Comprehensive Income and Hedging Activities	25-26		
12	Notes to the Financial Statements	27		
14	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion	28-29		
15	Plant in Service and Accumulated Provision for Depreciation By Function	30		
16	Public Utility and Licensees – Electric Revenues and Megawatt Hours	31		
17	Natural Gas Company – Gas Revenues and Dekatherms	32		
18	Depreciation, Depletion and Amortization Expenses of Utility Plant	33		
19	Electric Production, Other Power and Transmission and Distribution Expenses	34-35		
20	Gas Production and Other Gas Supply Expenses	36		
21	Natural Gas Storage, Terminaling, Processing, Transmission and Distribution Expenses	37		
22	Customer Accounts, Service, Sales, Administrative and General Expenses	38		
23	Other Regulatory Assets	39		
24	Other Regulatory Liabilities	40		
25	Transmission of Electricity For Others	41-42		

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Line No.	Title of Schedule	Page No.	Electric Utility, Licensee (a)	Natural Gas Company (b)
26	Transmission of Electricity By Others	43		
27	Monthly Peak Loads and Energy Output	44		
28	Monthly Transmission System Peak Load	45		

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GENERAL INFORMATION

I. Purpose

This form is a regulatory support requirement under 18 CFR 141.400 and 18 CFR 260.300. It is designed to collect financial and operational informational from electric utilities, licensees, and natural gas companies subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also considered to be a non-confidential public use form.

II. Who Must File

(a) Each major and non-major electric utility and licensee as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees (18 CFR Part 101) subject to the provisions of the Federal Power Act, must submit the form.

Note: Major means having, in each of the three previous calendar years, sales or transmission service that exceeds one of the following:

(1) one million megawatt hours of total annual sales,
(2) 100 megawatt hours of annual sales for resale,
(3) 500 megawatt hours of annual power exchanges delivered, or
(4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).

Non-major means having total annual sales of 10,000 megawatt-hours or more in the previous calendar year and not classified as Major.

(b) Each major and non-natural gas company as classified in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies (18 CFR Part 201) subject to the provisions of the Natural Gas Act, must submit the form.

III. What and Where to Submit

(a) Submit this form electronically through the Form 3-Q Submission Software. Retain one copy of this report for your files.

(b) Respondents may submit the Corporate Officer Certification electronically, or file an original signed Corporate Officer Certification certification to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

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GENERAL INFORMATION (continued)

IV. When to Submit

(a) Submit this report form according the filing dates contained in sections 18 CFR 141.400 and 18 CFR 260.300 of the Commission's regulations.

V. Where to Send Comments on Public Reporting Burden

(a) The public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 (Attention: Michael Miller, ED-30); and to the Office of Information and Regulatory Affairs, Office of the Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

(b) You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

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EXCERPTS FROM THE LAW AND GENERAL PENALTIES

Federal Power Act, 16 U.S.C. 791a-825r

"Sec. 3. The words defined in this section shall have the following meanings for the purposes of this Act, to wit: ... (3) "Corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include municipalities, as hereinafter defined;
(4) "Person" means an individual or corporation;
(5) "Licensee" means any person, State or municipality Licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;
(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry the business of developing, transmitting, unitizing, or distributing power; ..."
(11) "Project" means a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in the lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

"Sec. 4. The Commission is hereby authorized and empowered:
(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites; ... to the extent the Commission may deem necessary or useful for the purposes of this Act."

"Sec. 304. (a) Every Licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may be rules and regulations or other prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to the assets and liabilities, capitalization, net investment, and reduction thereof, gross receipts, interest due and paid, depreciation, generation, transmission, distribution, delivery, use, and sale of electric energy. The Commission may require any such person to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies."

"Sec. 309. The Commission shall have power to perform any and all acts, and to prescribe, issue, and make, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within they shall be filed..."

General Penalties

"Sec. 315. (a) Any licensee or public utility which willfully fails, within the time prescribed by the Commission, to comply with any order of the Commission, to file any report required under this Act or any rule or regulation of the Commission thereunder, to submit any information of document required by the Commission in the course of an investigation conducted under this Act ... shall forfeit to the United States an amount not exceeding $1,000 to be fixed by the Commission after notice and opportunity for hearing..."

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Appendix B: Form 3-Q and 6-Q Samples

EXCERPTS FROM THE LAW AND GENERAL PENALTIES

Natural Gas Act, 15 U.S.C. 717-717w

"Sec. 10(a). Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act. The Commission may prescribe the manner and form in which such reports shall be made and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest dues and paid, depreciation, amortization, and other reserves, cost of facilities, costs of maintenance and operation of facilities for the production, transportation, delivery, use, or sale of natural gas, costs of renewal and replacement of such facilities, transportation, delivery, use and sale of natural gas..."

"Section 16. The Commission shall have power to perform all and any acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and time within they shall be filed..."

General Penalties

"Sec. 21(b). Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs."

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Appendix B: Form 3-Q and 6-Q Samples

GENERAL INSTRUCTIONS

(a) Prepare this report in conformity with the Uniform Systems of Accounts, 18 CFR Parts 101 and 201. Interpret all accounting words and phrases in accordance with the Uniform Systems of Accounts.

(b) Complete each question fully and accurately, even if it has been answered in a previous quarterly report. Enter the word "None" where it truly and completely states the fact.

(c) Enter the month, day, and year for all dates. Use customary abbreviations. The "Date of Report" included in the header of each page is to be completed only for resubmissions. The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

(d) For any resubmissions, submit the electronic filing using the Form 3-Q Submission Software.

(e) Enter dollar amounts in whole numbers. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported in the positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

(f) Definitions for statistical classifications used for completing schedules for transmission system reporting are as follows:

FNS - Firm Network Transmission Service for Self. "Firm" means service that can not be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff. "Self" means the respondent.

FNO - Firm Network Service for Others. "Firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff.

LFP - for Long-Term Firm Point-to-Point Transmission Reservations. "Long-Term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Point-to-Point Transmission Reservations" are described in Order No. 888 and the Open Access Transmission Tariff. For all transactions identified as LFP, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally cancel the contract.

OLF - Other Long-Term Firm Transmission Service. Report service provided under contracts which do not conform to the terms of the Open Access Transmission Tariff. "Long-Term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as OLF, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally get out of the contract.

SFP - Short-Term Firm Point-to-Point Transmission Reservations. Use this classification for all firm point-to-point transmission reservations, where the duration of each period of reservation is less than one-year.

NF - Non-Firm Transmission Service, where firm means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions.

OS - Other Transmission Service. Use this classification only for those services which can not be placed in the above-mentioned classifications, such as all other service regardless of the length of the contract and service form. Describe the type of service in a footnote for each entry.

AD - Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment.

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Appendix B: Form 3-Q and 6-Q Samples

Name of Respondent _____ ___(E) Or ___(G)	This Report is: ___ An Original ___A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

IDENTIFICATION

	Item
1	Exact Legal Name of Respondent
2	Previous Name and Date of Change (If name changed during the period)
3	Address of Principal Office at End of Period
4	Name of Contact Person
5	Title of Contact Person
7	Address of Contact Person (Street, City, State, Zip Code)
8	Telephone of Contact Person, (Including Area Code)

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Name of Respondent _____ _____(E) or _____(G)	This Report is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

QUARTERLY CORPORATE OFFICER CERTIFICATION

The undersigned officer certifies that:

I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

Line No.	Name of Certifying Officer	Signature	Title	Date
1				

Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
___(E) Or ___(G)	___An Original ___A Resubmission	Month/Day/Year	Month/Day /Year

IMPORTANT CHANGES DURING THE QUARTER

Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number them in accordance with the inquires. Each inquiry should be answered. Enter "none," "not applicable," or "NA" where applicable.

1. Changes in and important additions to franchise rights: Describe the actual consideration given therefore and state from whom the franchise rights were acquired. If acquired without the payment of consideration, state that fact.

2. Acquisition of ownership in other companies by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, name of Commission authorizing the transaction, and reference to Commission authorization.

3. Purchase or sale of an operating unit or system: Give a brief description of the property, and of the transactions relating thereto, and reference to Commission authorization, if any was required. Give date journal entries called for by the Uniform System of Accounts were submitted to the Commission.

4. Important leaseholds (other than leaseholds for natural gas lands) that have been acquired or given, assigned or surrendered: Give effective dates, lengths of terms, names of parties, rents and other condition. State name of Commission authorizing lease and give reference to such authorization.

5. Important extension or reduction of transmission or distribution system: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required. State also the approximate number of customers added or lost and approximate annual revenues of each class of service. Each natural gas company must also state major new continuing sources of gas made available to it from purchases, development, purchase contract or otherwise, giving location and approximate total gas volumes available, period of contracts, and othet parties to such arrangements, etc.

6. Obligations incurred as a result of issuance of securities or assumption of liabilities or guarantees including issuance of short term debt and commercial paper having a maturity of one year or less. Give teference to FERC or State Commission authorization, as appropriate, and the amount of the obligation or guarantee.

7. Changes in articles of incorporation or amendments to charter. Explain the nature and purpose of such changes or amendments.

8. State the estimated annual effect and nature of any important wage scale changes during the period.

9. State briefly the status of any materially important legal proceedings pending at the end of the period, and the results of any such proceedings culminated during the period.

10. Describe briefly any material important transactions of the respondent not disclosed elsewhere in this report in which an officer, director, security holder reported in the last Annual Repott FERC Form 1, 1-F, 2 or 2-A, voting trustee, associated company or known associate of any of these persons was a party or in which such person had a material interest.

11. Describe fully any changes in officers, directors, major security holders and voting powers of the respondent that may have occurred during the reporting period.

12. In the event that the respondent participates in a cash management program(s) and its proprietary capital ratio is less than 30 percent please describe the significant events or transactions causing the proprietary capital ratio to be less than 30 percent, and the extent to which the respondent has amounts loaned or money advanced to its parent, subsidiary, or affiliated companies through a cash management program(s). Additionally, please describe plans, if any to regain at least a 30 percent proprietary ratio.

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Name of Respondent _____ (E)___ (G) ___	This Report is: ___ An Original ___A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

COMPARATIVE BALANCE SHEET

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance
1	UTILITY PLANT		
2	Utility Plant (101-106, 114)		
3	Construction Work in Progress (107)		
4	TOTAL Utility Plant (Enter Total of lines 2 and 3)		
5	(Less) Accum. Prov. for Depr. Amort. Depl. (108, 111, 115)		
6	Net Utility Plant (Enter Total of line 4 less 5)		
7	Nuclear Fuel in Process of Ref., Conv.,Enrich., and Fab. (120.1)		
8	Nuclear Fuel Materials and Assemblies-Stock Account (120.2)		
9	Nuclear Fuel Assemblies in Reactor (120.3)		
10	Spent Nuclear Fuel (120.4)		
11	Nuclear Fuel Under Capital Leases (120.6)		
12	(Less) Accum. Prov. for Amort. of Nucl. Fuel Assemblies (120.5)		
13	Net Nuclear Fuel (Enter Total of lines 7-11 less 12)		
14	Net Utility Plant (Enter Total of lines 6 and 13)		
15	Utility Plant Adjustments (116)		
16	Gas Stored Underground - Noncurrent (117) Electric		
17	Gas Stored - Base Gas(117.1) GAS ACCOUNT		
18	System Balancing Gas (117.2) GAS ACCOUNT		
19	Gas Stored in Reservoirs and Pipelines Noncurrent (117.3) GAS		
20	Gas Owed to System Gas (117.4) GAS ACCOUNT		
21	OTHER PROPERTY AND INVESTMENTS		
22	Nonutility Property (121)		
23	(Less) Accum. Prov. for Depr. and Amort. (122)		
24	Investments in Associated Companies (123)		
25	Investment in Subsidiary Companies (123.1)		
26	(For Cost of Account 123.1, See Footnote Page 224, line 42)		
27	Noncurrent Portion of Allowances		
28	Other Investments (124)		
29	Sinking Funds (125)		
30	Depreciation Fund (126)		
31	Amortization Fund - Federal (127)		
32	Other Special Funds (128)		
33	Special Funds (129) Non-Major		
34	Long-Term Portion of Derivative Assets (175)		
35	Long-Term Portion of Derivative Assets - Hedges (176)		
36	TOTAL Other Property and Investments (Lines 22-25 and 27-35)		

Forms 1 and 2 will be revised consistent with this page

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Appendix B: Form 3-Q and 6-Q Samples

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
____(E) or ___(G)	___ An Original ___A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance
33	**CURRENT AND ACCRUED ASSETS**		
34	Cash and Working Funds (Non-major Only) (130)		
35	Cash (131)		
36	Special Deposits (132-134)		
37	Working Fund (135)		
38	Temporary Cash Investments (136)		
39	Notes Receivable (141)		
40	Other Accounts Receivable (143)		
41	(Less)Accum.Prov. For Uncollectible Accts.Cr (144)		
42	Notes Receivable from Associated Companies (145)		
43	Accounts Receivable from Assoc. Companies (146)		
44	Fuel Stock (151)		
45	Fuel Stock Expe nses Undistributed (152)		
46	Residuals (Elec) and Extracted Products (153)		
47	Plant Materials and Operating Supplies (154)		
48	Merchandise (155)		
49	Other Material and Supplies (156)		
50	Nuclear Materials held for Sale (157)		
51	Allowances (158.1 and 158.2)		
52	(Less) Noncurrent Portion of Allowances		
53	Stores Expenses Undistributed (163)		
54	Gas Stored Underground-Current (164.1)		
55	LNG Stored and Held for Processing (164.2-164.3)		
56	Prepayments (165)		
57	Advances for Gas (166-167)		
58	Interest and Dividends Receivable (171)		
59	Rents Receivable (172)		
60	Accrued Utility Revenues (173)		
61	Miscellaneous Current and Accrued Assets (174)		
62	Derivative Instrument Assets (175)		
63	(Less) Long-Term Portion of Derivative Instrument Assets (175)		
64	Derivative Instrument Assets - Hedges (176)		
65	(Less) Long-Term Portion of Derivative Instrument Assets - Hedges (176)		
66	Total Current and Accrued Assets (Lines 34 through 65)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) or _____ (G)	___An Original ___A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance
67	DEFERRED DEBITS		
68	Unamortized Debt Expenses (181)		
69	Extraordinary Property Losses (182.1)		
70	Unrecovered Plant and Regulatory Study Costs (182.2)		
71	Other Regulatory Assets (182.3)		
72	Preliminary Survey and Investigation Charges (183)		
73	Preliminary Natural Gas Survey and Investigation Charges (183.1)		
74	Other Preliminary Survey and Investigation Charges (183.2)		
75	Clearing Accounts (184)		
76	Temporary Facilities (185)		
77	Miscellaneous Deferred Debits (186)		
78	Deferred Losses from Disposition of Utility Plant (187)		
79	Research, Development and Demonstration Expenditures (188)		
80	Unamortized Loss on Reacquired Debt (189)		
81	Accumulated Deferred Income Taxes (190)		
82	Unrecovered Purchase Gas Costs (191)		
83	Total Deferred Debits (lines 68 through 82)		
84	TOTAL ASSETS (lines 15-20, 36, 66, and 83)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(E) or ____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	LIABILITIES AND SHAREHOLDER EQUITY	Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance
1	PROPRIETARY CAPITAL		
2	Common Stock Issued (201)		
3	Preferred Stock Issued (204)		
4	Capital Stocked Subscribed (202,205)		
5	Stock Liability for Conversion (203,206)		
6	Premium on Capital Stock (207)		
7	Other Paid-In Capital (208-211)		
8	Installments Received on Capital Stock (212)		
9	(Less) Discount on Capital Stock (213)		
10	(Less) Capital Stock Expense (214)		
11	Retained Earnings (215, 215.1, 216)		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)		
13	(Less) Reacquired Capital Stock (217)		
14	Noncorporate Proprietorship (Non-major only) (218)		
15	Accumulated Other Comprehensive Income (219)		
16	Total Proprietary Capital (lines 2 through 15)		
17	LONG-TERM DEBT		
18	Bonds (221)		
19	(Less) Reacquired Bonds (222)		
20	Advances from Associated Companies (223)		
21	Other Long-term Debt (224)		
22	Unamortized Premium on Long-Term Debt (225)		
23	(Less) Unamortized Discount on Long-Term Debt (226)		
24	(Less) Current Portion of Long-Term Debt		
25	Total Long-Term Debt (lines 18 through 24)		
26	OTHER NONCURRENT LIABILITIES		
27	Obligations Under Capital Leases - Noncurrent (227)		
28	Accum. Prov. for Property Insurance (228.1)		
29	Accum. Prov. for Injuries and Damages (228.2)		
30	Accum. Prov. for Pensions and Benefits (228.3)		
31	Accum. Miscellaneous Operating Provisions (228.4)		
32	Accumulated Provision for Rate Refunds (229)		
33	Long-Term Portion of Derivative Instrument Liabilities		
34	Long-Term Portion of Derivative Instrument Liabilities - Hedges		
35	Asset Retirement Obligations (230)		
36	Total Other Noncurrent Liabilities (lines 27 through 35)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) or ___(G)	_____An Original _____A Resubmission	_Month/Day/Year	_Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	LIABILITIES AND SHAREHOLDER EQUITY	Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance Month/Day/Year
37	CURRENT AND ACCRUED LIABILITIES		
38	Current Portion of Long-Term Debt		
39	Notes Payable (231)		
40	Accounts Payable (232)		
41	Notes Payable to Associated Companies (233)		
42	Accounts Payable to Associated Companies (234)		
43	Customer Deposits (235)		
44	Taxes Accrued (236)		
45	Interest Accrued (237)		
46	Dividends Declared (238)		
47	Matured Long-Term Debt (239)		
48	Matured Interest (240)		
49	Tax Collections Payable (241)		
50	Miscellaneous Current and Accrued Liabilities (242)		
51	Obligations under Capital Leases - Current (243)		
52	Derivative Instrument Liabilities (244)		
53	(Less) Long-Term Portion of Derivative Instrument Liabilities		
54	Derivative Instrument Liabilities - Hedges (245)		
55	(Less) Long-Term Portion of Derivative Instrument Liabilities-Hedges		
56	Total Current and Accrued Liabilities (lines 38 through 55)		
57	DEFERRED CREDITS		
58	Customer Advances for Construction (252)		
59	Accumulated Deferred Investment Tax Credits (255)		
60	Deferred Gains from Disposition of Utility Plant (256)		
61	Other Deferred Credits (253)		
62	Other Regulatory Liabilities (254)		
63	Unamortized Gain on Reacquired Debt (257)		
64	Accum. Deferred Income Taxes-Accel. Amort.(281)		
65	Accum. Deferred Income Taxes-Other Property (282)		
66	Accum. Deferred Income Taxes-Other (283)		
67	Total Deferred Credits (lines 58 through 66)		
68	TOTAL LIABILITIES AND STOCKHOLDER EQUITY (lines 16,25,36,56 and 67)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter/Year Ending
_____	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS

1. Enter in column (b) the balance for the reporting quarter and in column (c) the balance for the same three month period for the prior year.
2. Enter in column (d) the year to date balance for the year, and in column (e) the year to date balance for the same period of the prior year.
3. Report in column (f) the quarter to date amounts for electric utility function; in column (g) the quarter to date amounts for gas utility, and in (h) the quarter to date amounts for other utility function.

Line No.	(a)	Current Year to Date Balance (Month/Day/Year) (b)	Prior Year to Date Balance (Month/Day/Year) (e)
1	UTILITY OPERATING INCOME		
2	Operating Revenues (400)		
3	OPERATING EXPENSES		
4	Operating Expenses (401)		
5	Maintenance Expense (402)		
6	Depreciation Expense (403)		
7	Depreciation of Asset Retirement Costs (403.1)		
8	Amortization and Depletion of Plant (404-405)		
9	Amortization of Utility Plant Acq. Adj. (406)		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)		
11	Amort. of Conversion Expenses (407.2)		
12	Regulatory Debits (407.3)		
13	(Less) Regulatory Credits (407.4)		
14	Taxes Other Than Income Taxes (408.1)		
15	Income Taxes-Federal (409.1)		
16	Income Taxes-Other (409.1)		
17	Prov. for Def. Income Taxes (410.1)		
18	(Less) Def. Income Taxes-Cr.(411.1)		
19	ITC Adjustment - Net (411.4)		
20	(Less) Gains From Disposition of Utility Plant (411.6)		
21	Losses From Disposition of Utility Plant (411.7)		
22	(Less) Gains From Disposition of Allowances (411.8)		
23	Losses From Disposition of Allowances (411.9)		
24	Accretion Expense (411.10)		
25	Net Utility Operating Income (Lines 2 through 24)		

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Appendix B Form 3-Q and 6-Q Samples.

STATEMENT OF INCOME AND RETAINED EARNINGS (Continued)

Line No.	Current Three Months Ended (Month/Day/Year) (d)	Prior Three Months Ended (Month/Day/Year) (e)	ELECTRIC FUNCTION (Month/Day/Year) (f)	GAS FUNCTION (Month/Day/Year) (g)	OTHER FUNCTION (Month/Day/Year) (h)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

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Appendix B Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
	____An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	(a)	Current Year to Date Balance (Month/Day/Year) (b)	Prior Year to Date Balance (Month/Day/Year) (b)	Current Three Months Ended (Month/Day/Year) (b)	Prior Three Months Ended (Month/Day/Year) (c)
26	Net Utility Operating Income				
27	OTHER INCOME AND DEDUCTIONS				
28	OTHER INCOME				
29	NONUTILITY OPERATING INCOME				
30	Revenues From Merchandising, Jobbing & Contract Work (415)				
31	(Less) Expenses of Merchandising, Jobbing & Contract Work (416)				
32	Revenues From Nonutility Operations (417)				
33	(Less) Expenses of Nonutility Operations (417.1)				
34	Nonoperating Rental Income (418)				
35	Equity in Earnings of Subsidiaries (418.1)				
36	Interest and Dividend Income (419)				
37	AFUDC (419.1)				
38	Misc. Nonoperating Income (421)				
39	Gain on Disposition of Property (421.1)				
40	Total Other Income (Enter Total lines of 32-41)				
41	OTHER INCOME DEDUCTIONS				
42	Loss on Disposition of Property (421.2)				
43	Miscellaneous Amortization (425)				
44	Donations (426.1)				
45	Life Insurance (426.2)				
46	Penalties (426.3)				
47	Expenditures for Certain Civic, Political and Related Activities (426.4)				
48	Other Deductions (426.5)				
49	Total Other Income Deductions (lines 44 through 50)				

Forms 1 and 2 will be revised consistent with this page.

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Appendix B Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) or _____ (G)	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	(a)	Current Year to Date Balance (Month/Day/Year) (b)	Prior Year to Date Balance (Month/Day/Year) (b)	Current Three Months Ended (Month/Day/Year) (b)	Prior Three Months Ended (Month/Day/Year) (c)
50	TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS				
51	Taxes Other than Income Taxes (408.2)				
52	Income Taxes - Federal (409.2)				
53	Income Taxes - Other (409.2)				
54	Provision for Deferred Income Taxes (410.2)				
55	(Less) Provision for Deferred Income Taxes-Cr. (411.2)				
56	Investment Tax Credit Adjustment -Net (411.5)				
57	Investment Tax Credits (420)				
58	Total Taxes on Other Income and Deductions (Lines 53 through 59)				
59	Net Other Income and Deductions (total lines 42,51 and 60)				
60	INTEREST CHARGES				
61	Interest on Long-Term Debt (427)				
62	Amortization of Debt Discount and Expenses(428)				
63	Amortization of Loss on Reacquired Debt (428.1)				
64	(Less) Amortization of Premium on Debt-Credit (429)				
65	(Less) Amortization of Gain on Reacquired Debt(429.1)				
66	Interest on Debt to Associated Companies (430)				
67	Other Interest Expense (431)				
68	Allowance for Borrowed Funds Used During Construction-Cr. (432)				
69	Net Interest Charges (Lines 63 through 70)				
70	Income Before Extraordinary Items (lines 28, 59, and 69)				

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Appendix B Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	___An Original ___A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	Item (a)	Current Year to Date Balance (Month/Day/Year) (b)	Prior Year to Date Balance (Month/Day/Year) (b)	Current Three Months Ended (Month/Day/Year) (d)	Prior Three Months Ended (Month/Day/Year) (e)
71	EXTRAORDINARY ITEMS				
72	Extraordinary Income (434)				
73	(Less) Extraordinary Deductions (435)				
74	Net Extraordinary Items (Line 75 less 76)				
75	Income Taxes -Federal and other (409.3)				
76	Extraordinary Items After Tax (Line 77 less 78)				
77	NET INCOME (line 72 and 79)				
78					
79	RETAINED EARNINGS				
80	UNAPPROPRIATED RETAINED EARNINGS				
81	Balance-Beginning of Year				
82	Adjustments to Retained Earnings (Account 439)				
83	Balance Transferred from Income (Account 433 less Account 418.1)				
84	Appropriations of Retained Earnings (Account 436)				
85	TOTAL Appropriations of Retained Earnings (Account 436) (Footnote Details)				
86	TOTAL Dividends Declared-Preferred Stock (Account 437) (Footnote Details)				
87	TOTAL Dividends Declared-Common Stock (Account 438) (Footnote Details)				
88	Transfers from Account 216.1, Unappropriated Undistributed Subsidiary Earnings				
89	Balance - End of Year (Total lines 81 through 88)				
90	Appropriated Retained Earnings (Account 215)				
91	TOTAL Appropriated Retained Earnings (Account 215) (Footnote Details)				
92	Appropriated Retained Earnings-Amortization Reserve, Federal (Acct. 215.1)				
93	TOTAL Appropriated Retained Earnings-Amortization Reserve, Federal (Account 215.1)				
94	TOTAL Appropriated Retained Earnings (Account 215, 215.1) (Total 91 and 93)				
95	TOTAL Retained Earnings (Account 215, 215.1, 216) (Total 89 and 94)				

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Appendix B Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS

(1) Codes to be used: (a) Net Proceeds or Payments; (b) Bonds, debentures and other long-term debt; (c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.

(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the Balance Sheet.

(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.

(4) Investing Activities: Include at Other (line 25) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

	Description (See Instruction for Explanation of Codes). (a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
1	**CASH FLOW FROM OPERATING ACTIVITIES:**		
2	Net Income		
3	**Noncash Charges (Credits) to Income:**		
4	Depreciation and Depletion		
5	Amortization of (Provide details in footnote)		
6	Deferred Income Taxes (Net)		
7	Investment Tax Credit Adjustment (Net)		
8	Net (Increase) Decrease in Receivables		
9	Net (Increase) Decrease Inventory		
10	Net (Increase) Decrease Allowances Inventory		
11	Net Increase (Decrease) Payables and Accrued Expenses		
12	Net (Increase) Decrease Other Regulatory Assets		
13	Net Increase (Decrease) Other Regulatory Liabilities		
14	(Less) Allowance for Other Funds Used During Construction		
15	(Less) Undistributed Earnings from Subsidiary Companies		
16	Other: (Provide details in footnote)		
17	Net Cash Provided by (Used in) Operating Activities (Total 2 through 16)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(E) or ____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	Description (See Instruction for Explanation of Codes). (a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
18	CASH FLOW FROM INVESTMENT ACTIVITIES		
19	Construction and Acquisition of Plant (including land):		
20	Gross Additions to Utility Plant (less nuclear fuel)		
21	Gross Additions to Nuclear Fuel		
22	Gross Additions to Common Utility Plant		
23	Gross Additions to Non utility Plant		
24	(Less) Allowance for Other Funds Used During Construction		
25	Other: (provide details in footnote)		
26	Cash Outflows for Plant (Total of Lines 20 through 25)		
27	Acquisition of Other Noncurrent Assets (d)		
28	Proceeds from Disposal of Noncurrent Assets (d)		
29	Investments in and Advances to Associated and Subsidiary Companies		
30	Contributions and Advances from Associated and Subsidiary Companies		
31	Disposition of Investments in (and advances to) Associated and Subsidiary Companies		
32	Purchase of Investment Securities (a)		
33	Proceeds from Sales of Investment Securities (a)		
34	Loans Made or Purchased		
35	Collections on Loans		
36	Net (Increase) Decrease in Receivables		
37	Net (Increase) Decrease in Inventory		
38	Net (Increase) Decrease in Allowances Held for Speculation		
39	Net Increase (Increase) in Payables and Accrued Expense		
40	Other: (provide details in footnote)		
41	Net Cash Provided by (Used in) Investing Activities (lines 26 through 40)		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ _____(E)_____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	(a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
42	**CASH FLOWS FROM FINANCING ACTIVITIES:**		
43	**Proceeds From Issuance of:**		
44	Long-Term Debt (b)		
45	Preferred Stock		
46	Common Stock		
47	Other: (provide details in footnote)		
48	Capital Contributions from Partners		
49	Net Increase in Short-Term Debt (c)		
50	Other: (provide details in footnote)		
51	Cash Provided by Outside Sources (lines 43 - 50)		
52	**Payments for Retirement of:**		
53	Long-Term Debt (b)		
54	Preferred Stock		
55	Common Stock		
56	Other: (provide details in footnote)		
57	Net Decrease in Short-Term Debt (c)		
58	Dividends on Preferred Stock		
59	Dividends on Common Stock		
60	Net Cash Provided by (Used in) Financing Activities (lines 51 through 59)		
61	NET (INCREASE) DECREASE IN CASH AND CASH EQUIVALENTS (lines 17, 41, and 60)		
62	CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD		
63	CASH AND CASH EQUIVALENTS AT END OF PERIOD		

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) or _____ (G)	___ An Original ___ A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b),(c),(d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.

2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.

3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (b)	Minimum Pension Liability adjustment (net amount) (c)	Foreign Currency Hedges (d)	Other Adjustments (e)
1	Balance of Account 219 at Beginning of Preceding Quarter				
2	Preceding Quarter Reclassification from Account 219 to Net Income				
3	Preceding Quarter Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Quarter/ Beginning of Current Quarter.				
6	Current Quarter Reclassification From Account 219 to Net Income				
7	Current Quarter Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 219 at End of Current Quarter				

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Name of Respondent _____ _____(E) _____(G)	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES (continued)

	Other Cash Flow Hedges Interest Rate Swaps (f)	Other Cash Flow Hedges [Insert Category] (g)	Totals for each category of items recorded in Account 219 (h)	Net Income (Carried Forward from Page 117, Line 72) (i)	Total Comprehensive Income (j)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(E) or ___(G)	This Report is: ___ An Original ___A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

NOTES TO FINANCIAL STATEMENTS

(1) Respondent must provide in the notes sufficient disclosures so as to make the interim information not misleading. Disclosures which would substantially duplicate the disclosures contained in the most recent FERC Annual Report may be omitted.

(2) Disclosures shall be provided where events subsequent to the end of the most recent year have occurred which have a material effect on the respondent. Respondent must include in the notes significant changes since the most recently completed year in such items as: accounting principles and practices; estimates inherent in the preparation of the financial statements; status of long-term contracts; capitalization including significant new borrowings or modifications of existing financing agreements; and changes resulting from business combinations or dispositions. However were material contingencies exist, the disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(3) Finally, if the notes to the financial statements relating to the respondent appearing in the annual report to the stockholders are applicable and furnish the data required by the above instructions, such notes may be included herein.

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ____(E) or ___(G)	This Report is: ____ An Original ____A Resubmission	Date of Report _Month/Day/Year	For the Quarter Ending _Month/Day/Year

SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION

Report in column (b) the total amount for the item shown in column (a). Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e) other (specify), and in column (f) common function.

	Classification	TOTAL COMPANY For the Quarter Ended Month/Day/Year (b)
1	**UTILITY PLANT**	
2	**In Service**	
3	Plant in Service (Classified)	
4	Property Under Capital Lease	
5	Plant Purchased or Sold	
6	Completed Construction Not Classified	
7	Experimental Plant Unclassified	
8	TOTAL Utility Plant (lines 3 through 7)	
9	Leased to Others	
10	Held for Future Use	
11	Construction Work in Progress	
12	Acquisition Adjustments	
13	TOTAL Utility Plant (lines 8 through 12)	
14	Accum. Prov. for Depreciation, Amortization & Depletion	
15	Net Utility Plant (Lines 13 and 14)	
16	**DETAIL OF ACCUM. PROV. FOR DEPRECIATION, AMORT. AND DEPLETION**	
17	**IN SERVICE**	
18	Depreciation	
19	Amort. and Depl. of Producing Natural Gas Land, Rights	
20	Amort. of Underground Storage Land and Land Rights	
21	Amortization of Other Utility Plant	
22	TOTAL IN SERVICE (lines 18 through 21)	
23	**Leased to Others**	
24	Depreciation	
25	Amortization and Depletion	
26	TOTAL Leased to Others (lines 24 and 25)	
27	**Held for Future Use**	
28	Depreciation	
29	Amortization	
30	TOTAL Held for Future Use (lines 28 and 29)	
31	Abandonment of leases (Natural Gas)	
32	Amortization of Plant Acquisition Adjustment	
33	TOTAL Accum. Provision (lines 22, 26, 30, 31, and 32)	

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ____(E) or ____(G)	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION (page 2)

Report in column (b) the total amount for the item shown in column (a). Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e) other (specify), and in column (f) common function.

	ELECTRIC For the Quarter Ended Month/Day/Year (c)	GAS For the Quarter Ended Month/Day/Year (d)	OTHER For the Quarter Ended Month/Day/Year (e)	COMMON For the Quarter Ended Month/Day/Year (f)
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33				

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____(E) or _____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

PLANT IN SERVICE AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTION

1. Report below the original cost of plant in service by function. In addition to Account 101, include Account 102, and Account 106. Report in column (b) the original cost of plant in service and in column(c) the accumulated provision for depreciation and Amortization by function.

	Function (a)	Plant in Service Balance at Month/Day/Year (b)	Accum. Depreciation And Amortization Balance at Month/Day/Year (c)
1	**Part A: Balances Period to Date for Electric Plant In Service**		
2	Intangible Plant		
2	Steam Production		
3	Nuclear Production		
4	Hydraulic Production - Conventional		
5	Hydraulic Production - Pumped Storage		
6	Other Production		
7	Transmission		
8	Distribution		
9	General		
10	Total (lines 2 through 9)		
11	**Part B: BALANCES AT PERIOD TO DATE GAS FOR NATURAL GAS**		
15	Intangible Plant		
12	Productions-Manufactured Gas		
13	Production and Gathering - Natural Gas		
14	Products Extraction - Natural Gas		
15	Underground Gas Storage		
16	Other Storage Plant		
17	Base Load LNG Terminaling and Processing Plant		
18	Transmission		
19	Distribution		
20	General		
21	Total (lines 12 through 20)		

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent (E)	This Report is: An Original A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

PUBLIC UTILITY AND LICENSEES - ELECTRIC REVENUES AND MEGAWATT HOURS

1. Report below column (b) electric operating revenues for each prescribed account at end of quarter.
2. In column (c) report Megawatt hour sales through the end of quarter.

Line No.	Item (a)	Operating Revenues Year to Date (b)	Megawatt Hour Sales Year to Date (c)
1	SALES OF ELECTRICITY		
2	(440) Residential Sales		
3	(442) Commercial and Industrial Sales		
4	Small (or Commercial)		
5	Large (or Industrial)		
6	(444) Public Street and Highway Lighting		
7	(445) Other Sales to Public Authorities		
8	(446) Sales to Railroads and Railways		
9	(448) Interdepartmental Sales		
10	Total Sales to Ultimate Customers (lines 2 through 9)		
11	(447) Sales for Resale		
12	Total Sales of Electricity (lines 10 and 11)		
13	(Less) (449.1) Provision for Rate Refunds		
14	Total Revenues Net of Provision for Refunds (lines 12 and 13)		
15	OTHER OPERATING REVENUES		
16	(450) Forfeited Discounts		
17	(451) Miscellaneous Service Revenues		
18	(453) Sales of Water and Water Power		
19	(454) Rent from Electric Property		
20	(455) Interdepartmental Rents		
21	(456) Other Electric Revenues		
22	Total Other Operating Revenues (line 16 through 21)		
23	Total Electric Operating Revenues(line 14 and 22)		

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

NATURAL GAS COMPANY- GAS REVENUES AND DEKATHERMS

1. Report below in column (b) natural gas operating revenues for each prescribed account year to date.
2. In column (c) report the quantity of Dekatherms sold of natural gas year to date.

	(a)	Operating Revenues Year to Date (b)	Dekatherms of Natural Gas Year to Date (c)
1	SALES		
2	(480) Residential Sales		
3	(481) Commercial and Industrial Sales		
4	(482) Other Sales to Public Authorities		
5	(483) Sales for Resale		
6	(484) Interdepartmental Sales		
7	Total Sales (Lines 2 through 6)		
8	(485)Intra Company Transfers		
9	(487) Forfeited Discounts		
10	(488) Miscellaneous Service Revenues		
11	(489.1) Revenues From Transportation of Gas of Others Through Gathering Facilities		
12	(489.2) Revenues From Transportation of Gas of Others Through Transmission Facilities		
13	(489.3) Revenues From Transportation of Gas of Others Through Distribution Facilities		
14	(489.4) Revenues From Storing Gas of Others		
15	(490) Sales of Products Extracted From Natural Gas		
16	(491) Revenues From Natural Gas Processed By Others		
17	(492) Incidental Gasoline and Oil Sales		
18	(493) Rent From Gas Property		
19	(494) Interdepartmental Rents		
20	(495) Other Gas Revenues		
21	Subtotal (lines 7 through 20)		
22	(Less) (496) Provision for Rate Refunds		
23	TOTAL (Lines 21 and 22)		

Form 2 will be revised for consistency.

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) (G)	___ An Original ___ A Resubmission	Month/Day/Year	Month/Day/Year

DEPRECIATION, DEPLETION, AND AMORTIZATION OF UTILITY PLANT

1. Report the year to date amounts of depreciation expense, asset retirement cost depreciation, depletion and amortization, except amortization of acquisition adjustments for the accounts indicated and classified according to the plant functional groups described.

	Functional Classification (a)	Depreciation Expense (403) (b)	ARO Depreciation (403.1) (c)	Amort. Charges (404) (d)	Amort. Charges (405) (e)	Total (e)
1	Section A: ELECTRIC					
2	Intangible Plant					
3	Steam Production Plant					
4	Nuclear Production Plant					
5	Hydraulic Production Plant Conv					
6	Hydraulic Production Plant - Pumped Storage					
7	Other Production Plant					
8	Transmission Plant					
9	Distribution Plant					
10	General Plant					
11	Common Plant					
12	TOTAL ELECTRIC (lines 2 through 11)					
13	Section B: NATURAL GAS					
14	Intangible Plant					
15	Production Plant, Manufacturing Plant					
16	Production and Gathering Plant, NG					
17	Products Extraction Plant					
18	Underground Gas Storage Plant					
19	Other Storage Plant					
20	Base Load LNG Terminaling and Processing Plant					
21	Transmission Plant					
22	Distribution Plant					
23	General Plant					
24	Common Plant					
25	TOTAL GAS (lines 14 through 24)					

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ___(E) or ___(G)	___ An Original ___A Resubmission	Month/Day/Year	Month/Day/Year

ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission and distribution expenses through the reporting period.

		Year to Date Month/Day/Year
1	**1.POWER PRODUCTION AND OTHER SUPPLY EXPENSES**	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation - Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation - Operation (517-525)	
6	Nuclear Power Generation - Maintenance(528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation - Operation (535-540.1)	
9	Hydraulic Power Generation - Maintenance(541-545.1)	
10	Total Power Production Expenses - Hydraulic Power	
11	Other Power Generation-Operation (546-550.1)	
12	Other Power Generation-Maintenance(551-554.1)	
13	Total Power Production Expenses - Other Power	
14	**Other Power Supply Expenses**	
15	Purchased Power (555)	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 15-17)	
19	Total Power Production Expenses (Total of lines 4, 7, 10, 13 and 18	
20	**2. TRANSMISSION AND DISTRIBUTION EXPENSES**	
21	**Transmission Operation Expenses**	
22	(560) Operation Supervision and Engineering	
23	(561) Load Dispatching	
24	(562) Station Expenses	
25	(563) Overhead Line Expenses	
26	(564) Underground Line Expenses	
27	(565) Transmission of Electricity by Others	
28	(566) Miscellaneous Transmission Expenses	
29	(567) Rents	
30	(567.1) Operation Supplies and Expenses (Non-Major)	
31	TOTAL Transmission Operation Expenses (Lines 22- 30)	

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ___(E) or ___(G)	___ An Original ___A Resubmission	Month/Day/Year	Month/Day/Year

ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES (Continued)

32	(568) Maintenance Supervision and Engineering	
33	(569) Maintenance of Structures	
34	(570) Maintenance of Station Equipment	
35	(571) Maintenance Overhead Lines	
36	(572) Maintenance of Underground Lines	
37	(573) Maintenance of Miscellaneous Transmission Plant	
38	(574) Maintenance of Transmission Plant	
39	Total Transmission Maintenance Expenses (Total Trans. Maintenance Expense Lines 32 -38)	
40	Total Transmission Expenses (Lines 31-39)	
41	**DISTRIBUTION EXPENSES**	
42	Distribution Operation Expenses (580-589)	
43	Distribution Maintenance Expenses (590-598)	
44	Total Distribution Expenses (Lines 42 and 43)	
45	TOTAL	

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ _____(E) or ____(G)	This Report is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

GAS PRODUCTION AND OTHER GAS SUPPLY EXPENSES

Report the amount of gas production and other gas supply expenses year to date.

		Year to Date
1	PRODUCTION EXPENSES	
2	Manufactured Gas Production	
5	Total Manufactured Gas Production (700-742)	
6	Natural Gas Production and Gathering	
7	(750-760) Operation	
8	(761-769) Maintenance	
9	Total Natural Gas Production and Gathering (lines 7 and 8)	
10	Production Extraction	
11	(770-783) Operation	
12	(784-791) Maintenance	
13	Total Production Extraction (lines 9 and 10)	
14	(795-798) Exploration and Development Expenses	
15	Other Gas Supply Expenses	
16	Operation	
17	(800) Natural Gas Well Head Purchases	
18	(800.1) Natural Gas Well Head Purchases, Intra company Transfers	
19	(801) Natural Gas Field Line Purchases	
20	(802) Natural Gasoline Plant Outlet Purchases	
21	(803) Natural Gas Transmission Line Purchases	
22	(804) Natural Gas City Gate Purchases	
23	(804.1) Liquefied Natural Gas Purchases	
24	(805) Other Gas Purchases	
25	(805.1)(Less) Purchase Gas Cost Adjustments	
26	Total Purchased Gas (lines 17 through 25)	
27	(806) Exchange Gas	
28	Purchased Gas Expenses	
29	(807.1) Well Expense - Purchased Gas	
30	(807.2) Operation of Purchased Gas Measuring Stations	
31	(807.3) Maintenance of Purchased Gas Measuring Stations	
32	(807.4) Purchased Gas Calculations Expenses	
33	(807.5) Other Purchased Gas Expenses	
34	Total Purchased Gas Expenses	
35	(808.1) Gas Withdrawn From Storage-Debt	
36	(808.2)(Less) Gas Delivered to Storage - Credit	
37	(809.1) Withdrawals of Liquefied Natural Gas for Processing - Debt	
38	(809.2)(Less) Deliveries of Natural Gas Processing - Credit	
39	Gas Used in Utility Operation-Credit	
40	(810) Gas Used for Compressor Station Fuel - Credit	
41	(811) Gas Used for Products Extraction - Credit	
42	(812) Gas Used for Other Utility Operations - Credit	
43	Total Gas Used in Utility Operations - Credit	
44	(813) Other Gas Supply Expenses	
45	Total Other Gas Supply Expenses	
46	Total Production Expenses	

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
___(G)	____ An Original ____ A Resubmission	_Month/Day/Year	_Month/Day/Year

NATURAL GAS STORAGE, TERMINALING, PROCESSING EXPENSES

Report the amount of natural gas storage, terminaling, processing, transmission and distribution expenses year to date.

		Year to Date Month/Day/Year
1	NATURAL GAS STORAGE, TERMINALING AND PROCESSING EXPENSES	
2	UNDERGROUND STORAGE EXPENSES	
3	(814-826) Operations	
4	(830-837) Maintenance	
5	Total Underground Storage Expenses (lines 3 and 4)	
6	OTHER STORAGE EXPENSES	
7	(840-842.3) Operations	
8	(843.1-843.9) Maintenance	
9	Total Other Storage Expenses (lines 6 and 7)	
10	LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING	
11	(844.1-846.2) Operations	
12	(847.1-847.8) Maintenance	
13	Total Liquified Natural Gas Terminaling and Processing (Lines 11 and 12)	
14	TRANSMISSION EXPENSES	
15	Transmission Operation Expenses	
16	(850) Operation Supervision and Engineering	
17	(851) System Control and Load Dispatching	
18	(852) Communication System Expenses	
19	(853) Compressor Station Labor and Expenses	
20	(854) Gas for Compressor Station Fuel	
21	(855) Other Fuel and Power for Compressor Stations	
22	(856) Mains Expenses	
23	(857) Measuring and Regulating Station Expenses	
24	(858) Transmission and Compression of Gas by Others	
25	(859) Other Expenses	
26	(860) Rents	
27	Total Transmission Operation Expenses	
28	Transmission Maintenance Expenses	
29	(861) Maintenance Supervision and Engineering	
30	(862) Maintenance of Structures and Improvements	
31	(863) Maintenance of Mains	
32	(864) Maintenance of Compressor Station Equipment	
33	(865) Maintenance of Measuring and Regulating Station Equipment	
34	(866) Maintenance of Communication Equipment	
35	(867) Maintenance of Other Equipment	
36	Total Transmission Maintenance Expenses	
37	Total Transmission Expenses (lines 27 and 36)	
38	DISTRIBUTION EXPENSES	
39	(871-881)Operation Expenses	
40	(885-894)Maintenance	
41	Total Distribution Expenses (lines 39 and 40)	
42	Total (lines 5, 9, 13, 37 and 41)	

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	___ An Original		
____(E) or ____(G)	___A Resubmission	Month/Day/Year	Month/Day/Year

CUSTOMER ACCOUNTS, SERVICE, SALES, ADMINISTRATIVE AND GENERAL EXPENSES

Report the amount of expenses for customer accounts, service, sales, and administrative and general expenses year to date.

		Year to Date Month/Day/Year
1	(901-905) CUSTOMER ACCOUNTS EXPENSE	
2	(907-910) CUSTOMER SERVICE AND INFORMATIONAL EXPENSES	
3	(911-917) SALES EXPENSES	
4	**ADMINISTRATIVE AND GENERAL EXPENSES**	
5	**Operations**	
6	(920) Administrative and General Expenses	
7	(921) Office Supplies and Expenses	
8	(Less) (922) Administrative Expenses Transferred - Credit	
9	(923) Outside Services Employed	
10	(924) Property Insurance	
11	(925) Injuries and Damages	
12	(926) Employee Pensions and Benefits	
13	(927) Franchise Requirements	
14	(928) Regulatory Commission Expenses	
15	(929) (Less) Duplicate Charges - Credit	
16	(930.1) General Advertising Expenses	
17	(930.2) Miscellaneous General Expenses	
18	(931) Rents	
19	Total Adm. and General Operation Expenses (lines 6 through 18)	
20	**Maintenance**	
21	(935) Maintenance of General Plant	
22	Total Administrative and General Expenses (lines 19 and 21)	

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) _____ (G)	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

OTHER REGULATORY ASSETS (Account 182.3)

1. Report below the particulars (details) called for concerning other regulatory assets, including rate order docket number, if applicable.

2. Minor items (5% of the Balance in Account 182.3 at end of period, or amounts less than $50,000 which ever is less), may be grouped by classes.

	Description and Purpose of Other Regulatory Assets (a)	Balance at Beginning of Current Quarter (b)	Debits (c)	Written Off During Quarter Account Charged (d)	Written Off During Period Amount (e)	Balance at End of Current Quarter (f)
1						
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10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24	Total					

Annual Form 1 will be revised for consistency.

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	__Month/Day/Year	Month/Day/Year

OTHER REGULATORY LIABILITIES (Account 254)

1. Report below the particulars (details) called for concerning other regulatory liabilities, including rate order docket number, if applicable.

2. Minor items (5% of the Balance in Account 254 at end of period, or amounts less than $50,000 which ever is less), may be grouped by classes.

	Description and Purpose of Other Regulatory Assets (a)	Balance at Beginning of Quarter (b)	Debits Account Credited (c)	Debits Amount (d)	Credits (e)	Balance End of Quarter Month/Day/Year (f)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24	Total					

Annual Forms 1 will be revised for consistency.

Docket No. RM03-8-000
Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	___ An Original		
___(E) or ____(G)	___A Resubmission	_Month/Day/Year	Month/Day/Year

TRANSMISSION OF ELECTRICITY FOR OTHERS (ACCOUNT 456)

1. Report all transmission of electricity, i.e., wheeling, provided for other electric utilities, cooperatives, municipalities, other public authorities, qualifying facilities, non-traditional utility suppliers and ultimate customers. Report quarterly data year to date.

2. Use a separate line of data for each distinct type of transmission service involving the entities listed in column (a), (b) and (c).

3. Report in column (a) the company or public authority that paid for the transmission service. Report in column (b) the company or public authority that the energy was received from and in column (c) the company or public authority that the energy was delivered to. Provide the full name of each company or public authority. Do not abbreviate or truncate name or use acronyms. Explain in a footnote any ownership interest in or affiliation the respondent has with the entities listed in columns (a), (b) or (c).

4. In column (d) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: LFP - "Long-Term Firm Point to Point Transmission Service, OLF - Other Long-Term Firm Transmission Service, SFP - Short-Term Firm Point to Point Transmission Reservation, NF - non-firm transmission service, OS - Other Transmission Service and AD - Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment. **See General Instruction for definitions of codes.**

	Payment By Company or Public Authority Footnote Affiliation (a)	Energy Received From Company or Public Authority Footnote Affiliation (b)	Energy Delivered To Company or Public Authority Footnote Affiliation (c)	Statis. Class. (d)	FERC Rate Schedule or Tariff No. (e)	Point of Receipt Substation or Other Designation (f)	Point of Delivery Substation or Other Designation (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ____(E) or _____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report ____Month/Day/Year	For the Quarter Ending Month/Day/Year

TRANSMISSION OF ELECTRICITY FOR OTHERS (ACCOUNT 456) (continued)

5. In column (e), identify the FERC rate schedule or Tariff Number. On separate lines, list all FERC rate schedules or contracts designations under which service, as identified in column (d), is provided.

6. Report receipt and delivery locations for all single contract paths, "point-to-point" transmission service. In column (f) report the designation for the substation, or other appropriate identification for where energy was delivered as specified in the contract.

7. Report in column (h) the number of megawatts of billing demand that is specified in the firm transmission service contract. Demand reported in column (h) must be in megawatts. Footnote any demand not stated in megawatts basis and explain.

8. Report in column (i) and (j) the total megawatt hours received and delivered.

9. In column (k) through (n) report the revenue amounts as shown on bills or vouchers. In column (k) provide revenues from energy charges related to the amount of energy transferred. In column (m), provide the total revenues from all other charges on bills or vouchers rendered, including out of period adjustments. Explain in a footnote all components of the amount shown in column (m). Report in column (n) the total charge shown on bills rendered to the entity listed in column (a). If no monetary settlement was made, enter zero in column (n). Provide a footnote explaining the nature of the non-monitory settlement, including the amount and type of energy or service rendered.

10. Provide total amounts in column (i) through (n) as the last line.

11. Footnote entries and provide explanations following all required data.

Line No.	Billing Demand (MWH) (h)	MWH Received (i)	MWH Delivered (j)	Demand Charges ($) (k)	Energy Charges ($) (l)	Other Charges ($) (m)	Total Revenue ($) (n)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent ____(E) or _____(G)	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

TRANSMISSION OF ELECTRICITY BY OTHERS (ACCOUNT 565)

1. Report all transmission, i.e. wheeling or electricity provided by other electric utilities, cooperatives, municipalities, other public authorities, qualifying facilities, and others on a year to date basis for the quarter reported.

2. In column (a) report each company or public authority that provided transmission service. Provide the full name of the company, abbreviate if necessary, but do not truncate mane or use acronyms. Explain in a footnote any ownership interest in or affiliation with the transmission service provider. Use additional columns as necessary to report all companies or public authorities that provided transmission service through the quarter reported.

3. In column (b) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: FNS - Firm Network Transmission Service for Self. LFP - Long-Term Firm Point-to-Point Transmission Reservations. SFP - Short-Term Firm Point-to-Point Transmission Reservations, NF - Non-Firm Transmission Service, and OS - other transmission service. See General Instructions for definitions of statistical classifications.

4. Report in column (c) and (d) the total megawatt hours received and delivered by the provider of the transmission service.

5. Report in column (e), (f) and (g) expenses as shown on bills or vouchers rendered to the respondent. In column (e) report the demand charges and in column (f) energy charges related to the amount of energy transferred. On column (g) report the total of all other charges on bills or vouchers rendered to the respondent, including any out of period adjustments. Explain in a footnote all components of the amount shown in column (g). Report in column (h) the total charge shown on bills rendered to the respondent. If no monetary settlement was made, enter zero in column (h). Provide a footnote explaining the nature of the non-monetary settlement, including the amount and type of energy or service rendered.

6. Enter "TOTAL" in column (a) as the last line.

7. Footnote entries and provide explanations following all required data.

	Name of Company or Public Authority Footnote Affiliations (a)	Stat. Class (b)	Megawatt hours Received (c)	Megawatt hours Delivered (d)	Demand Charges (e)	Energy Charges (f)	Other Charges (g)	Total (h)
1								
2								
3								
4								
5								
6								
7								
8								

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(E) or ____(G)	This Report is: ___ An Original ___A Resubmission	Date of Report _Month/Day/Year	For the Quarter Ending Month/Day/Year

MONTHLY PEAK LOADS AND ENERGY OUTPUT

(1) Report the monthly peak load and energy output. If the respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.

(2) Report on line 2 by month the system's output in Megawatt hours for each month.

(3) Report on line 3 by month the non-requirements sales for resale. Include in the monthly amounts any energy losses associated with the sales.

(4) Report on line 4 by month the system's monthly maximum megawatt load (60 minute integration) associated with the system.

(5) Report on lines 5 and 6 the specified information for each monthly peak load reported on line 4.

Name of System:

Line No	(a)	Month/Year (b)	Month/Year (c)	Month/Year (d)	Total for Quarter (d)
1	**MONTHLY PEAK LOADS AND ENERGY OUTPUT**				
2	Total Monthly Energy (MWH)				
3	Monthly Non-Requirements Sales for Resale				
4	Monthly Peak MW				
5	Day of Month Peak				
6	Hour of Monthly Peak				

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Appendix B: Form 3-Q and 6-Q Samples.

Name of Respondent _____ ___(E) or ____(G)	This Report is: ___ An Original ___A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

MONTHLY TRANSMISSION SYSTEM PEAK LOAD

(1) Report the monthly peak load on the respondent's transmission system. If the respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.
(2) Report on line 2 by month the transmission system's peak load.
(3) Report on lines 3 and 4 the specified information for each monthly transmission - system peak load reported on line 2.
(4) Report on lines 4 through 10 by month the system' monthly maximum megawatt load by statistical classifications. See General Instruction for the definition of each statistical classification.

	(a)	Month/Year (b)	Month/Year (c)	Month/Year (d)	Total for Quarter (e)
1	MONTHLY TRANSMISSION SYSTEM PEAK LOADS				
2	Monthly Peak MW - Total				
3	Day of Monthly Peak				
4	Hour of Monthly Peak				
5	Firm Network Service - For Self				
6	Firm Network Service – For Others				
7	Long-Term Firm Point-to-Point Reservations				
8	Other Long-Term Firm Service				
9	Short-Term Firm Point-to-Point Reservation				
10	Other Service				

Annual Form 1 will be revised to include an annual version of this page.

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Appendix B: Form 3Q and Form6Q Samples.

Form Approved
OMB No. _____
Expires (Month/Day/Year)

THIS FILING IS A
___ An Initial (Original) Application or
___ Resubmission No.____

FERC FORM No. 6-Q:
QUARTERLY FINANCIAL REPORT
OF OIL PIPELINE COMPANIES

This report is mandatory under the Interstate Commerce Act, Section 20, and 18 CFR 357.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

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Appendix B: Form 3Q and Form6Q Samples.

Exact Legal Name of Respondent (Company)	For The Quarter Ending
_____	_____ Month/Day/Year

LIST OF SCHEDULES

Enter in column (c) the terms "none", "not applicable" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none" or "not applicable".

Line No.	Title of Schedule	Page No.	Remarks
1	General Information	3	
2	Excerpts from Law and General Penalties	4	
3	General Instructions	5	
4	Identification	6	
5	Corporate Officer Certification	7	
6	Important Changes During the Quarter	8	
7	Comparative Balance Sheet	9-11	
8	Statement of Income and Retained Earnings	12-14	
9	Statement of Cash Flows	15-17	
10	Statement of Accumulated Comprehensive Income and Hedging Activities	18-19	
11	Notes to the Financial Statements	20	
12	Operating Revenues	21	
13	Operation, Maintenance and General Expenses	22-23	
14	Statistics of Operation	24-25	

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Appendix B: Form 3Q and Form6Q Samples.

I. Purpose

This form is a regulatory support requirement under 18 CFR 357.400. It is designed to collect financial and operational informational from oil pipeline companies subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also considered to be a non-confidential public use form.

II. Who Must File

(a) Each oil pipeline company, subject to the provisions of Section 20 of the Interstate Commerce Act, and having jurisdictional operating revenues of $500,000 or more in each of the three immediately preceding calendar years, must submit this form.

III. What and Where to Submit

(a) Submit this form electronically through the Form 6-Q Submission Software. Retain one copy of this report for your files.

(b) Respondents may submit the Corporate Officer Certification electronically or file a signed original Corporate Officer Certification to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

IV. When to Submit

(a) Submit this report form according the filing dates contained in sections 18 CFR 357.400 of the Commission's regulations.

V. Where to Send Comments on Public Reporting Burden

(a) The public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 (Attention: Michael Miller, ED-30); and to the Office of Information and Regulatory Affairs, Office of the Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

(b) You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

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Appendix B: Form 3Q and Form6Q Samples.

EXCERPTS FROM THE LAW

Interstate Commerce Act, Part 1

Section 20

(1) The Commission is hereby authorized to require annual, periodic, or special reports from carriers, lessors, *(as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, ***specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classify such carriers, lessors, *as it may deem proper for any of these purposes.

General Penalties

Section 20

(7)(b) Any person who shall knowingly and willfully make, cause to be made, or participate in the making of any false entry in any annual or other report required under this section to be filed, ***or shall knowingly or willfully file with the Commission any false report, or other document, shall be deemed guilty of an misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment:***

(7)(c) Any carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full true and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

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Appendix B: Form 3Q and Form6Q Samples.

GENERAL INSTRUCTIONS

I. Prepare this report in conformity with the Uniform System of Accounts (18 CFR 352). Interpret all accounting words and phrases in accordance with the Uniform System of Accounts.

II. Enter in dollar amounts in whole numbers.

III. Complete each question fully and accurately, even if it has been answered in a previous quarterly report. Enter the word "None" where it truly and completely states the fact.

IV. Enter the month, day, and year for all dates. Use customary abbreviations. The "Date of Report" included in the header of each page is to be completed only for resubmissions. The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

V. For any resubmissions, submit the filing using the Form 6 - Q Submission Software.

VI. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported in the positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

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Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

IDENTIFICATION

	Item
1	Exact Legal Name of Respondent
2	Previous Name and Date of Change (If name changed during the period)
3	Address of Principal Office at End of Period
4	Name of Contact Person
5	Title of Contact Person
7	Address of Contact Person (Street, City, State, Zip Code)
8	Telephone of Contact Person, (Including Area Code)

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

CORPORATE OFFICER CERTIFICATION

The undersigned officer certifies that:

I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

Line No.	Name of Certifying Official	Title	Date
1			

Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	___ An Original ___ A Resubmission	Month/Day/Year	Month/Day/Year

IMPORTANT CHANGES DURING THE QUARTER

Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number these in accordance with the inquires. Each inquiry should be answered. Enter "none" or "not applicable" where applicable. If information which answers an inquiry is given elsewhere in the report, make a reference to the schedule in which it appears.

(1) Changes and important additions to franchise rights: Describe the actual consideration given therefor and state from whom the franchise rights were acquired. State if no consideration was given.

(2) Acquisition of ownership in other carrier operations by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, and reference to dates of Commission authorization and journal entries filed if applicable.

(3) Important extension or reduction of carrier pipeline operations: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required.

(4) State briefly the status of any materially important legal proceedings pending at the end of the year, and the results of any such proceedings culminated during the period.

(5) In the event that respondent participates in a cash management program(s) and its proprietary capital ratio is less than 30 percent, please describe the significant events or transactions causing the proprietary capital ratio to be less than 30 percent, and the extent to which the respondent has amounts loaned or money advanced to its parent, subsidiary, or affiliated companies through a cash management program(s). Additionally, please describe plans, if any, to regain at least a 30 percent proprietary ratio.

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

COMPARATIVE BALANCE SHEET

		Current Year End of Quarter Balance Month/Day/Year	Prior Year End Balance
1	**CURRENT ASSETS**		
2	Cash (10)		
3	Special Deposits (10-5)		
4	Temporary Investments (11)		
5	Notes Receivable (12)		
6	Receivables From Affiliated Companies (13)		
7	Accounts Receivable (14)		
8	Accumulated Provision For Uncollectible Accounts (14-5)		
9	Interest and Dividends Receivable (15)		
10	Oil Inventory (16)		
11	Material and Supplies (17)		
12	Prepayment (18)		
13	Other Current Assets (19)		
14	Deferred Income Tax Assets (19-5)		
15	TOTAL Current Assets (lines 2 through 14)		
16	**INVESTMENTS AND SPECIAL FUNDS**		
17	Investments in Affiliated Companies (20)		
18	Stocks		
19	Bonds		
20	Other Secured Obligations		
21	Unsecured Notes		
22	Investment Advances		
23	Undistributed Earnings From Certain Invest in Account 20		
24	Other Investments (21)		
25	Stocks		
26	Bonds		
27	Other Secured Obligations		
28	Unsecured Notes		
29	Investment Advances		
30	Sinking and Other Funds (22)		
31	Total Investment and Special Funds (lines 17 through 30)		

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Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

		Current Year End of Quarter Balance (Month/Day/Year	Prior Year End Balance
32	TANGIBLE PROPERTY		
33	Carrier Property (30)		
34	(Less) Accrued Depreciation - Carrier Property (31)		
35	(Less) Accrued Amortization - Carrier Property (32)		
36	Net Carrier Property (Line 33 Less lines 34 and 35)		
37	Operating Oil Supply (33)		
38	Non Carrier Property (34)		
39	(Less) Accrued Depreciation - Noncarrier Property		
40	Net Non Carrier Property (line 38 less 39)		
41	Total Tangible Property (lines 36, 37 and 40)		
42	OTHER ASSETS AND DEFERRED CHARGES		
43	Organization Costs and Other Intangibles (40)		
44	(Less) Accrued Amortization of Intangibles (41)		
45	Miscellaneous Other Assets (43)		
46	Other Deferred Charges (44)		
47	Accumulated Deferred Income Tax Assets (45)		
48	Derivative Instrument Assets (46)		
49	Derivative Instrument Assets - Hedges (47)		
50	Total Other Assets and Deferred Charges (lines 43 through 49)		
51	TOTAL ASSETS (lines 15, 31, 41, and 50)		

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Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

		Current Year End of Quarter Balance (Month/Day/Year)	Prior Year End Balance
1	**CURRENT LIABILITIES**		
2	Notes Payable (50)		
3	Payables to Affiliated Companies (51)		
4	Accounts Payable (52)		
5	Salaries and Wages Payable (53)		
6	Interest Payable (54)		
7	Dividend Payable (55)		
8	Taxes Payable (56)		
9	Long-Term Debt - Payable within one year (57)		
10	Other Current Liabilities (58)		
11	Deferred Income Tax Liabilities (59)		
12	Total Current Liabilities (lines 2 through 11)		
13	**NONCURRENT LIABILITIES**		
14	Long-Term Debt - Payable after one year (60)		
15	Unamortized Premium on Long-Term Debt-Dr (62)		
16	Other Noncurrent Liabilities (63)		
17	Accumulated Deferred Income Tax Liabilities (64)		
18	Total Noncurrent Liabilities (lines 14 through 17)		
19	Total Liabilities (lines 12 and 18)		
20	**STOCKHOLDERS' EQUITY**		
21	Capital Stock (70)		
22	Premiums on Capital Stock (71)		
23	Capital Stock Subscriptions (72)		
24	Additional Paid-In Capital (73)		
25	Appropriated Retained Income (74)		
26	Unappropriated Retained Income (75)		
27	(Less) Treasury Stock (76)		
28	Accumulated Other Comprehensive Income (77)		
29	Total Stockholders Equity (lines 20 through 27)		
30	TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (lines 19 and 29)		

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS

1. Enter in column (b) the balance for the reporting quarter and enter in column (c) the balance for the same three month period for the prior year.

2. Enter in column (d) the year to date balance for the year, and enter in column (e) the year to date balance for the same period of the prior year.

	(a)	Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day/Year) (e)
1	ORDINARY ITEMS-Carrier Operating				
2	Operating Revenues (600)				
3	(Less) Operating Expenses (610)				
4	Net Carrier Operating Income				
5	**Other Income and Deductions**				
6	Income (Net) From Noncarrier Property (602)				
7	Interest and Dividend Income (630)				
8	Miscellaneous Income (640)				
9	Unusual or Infrequent Items-Cr.(645)				
10	(Less)Interest Expense (650)				
11	(less) Misc. Income Charges (660)				
12	(Less) Unusual or Infrequent Items Debit (665)				
13	Dividend Income (Equity Investments)				
14	Undistributed Earnings (Losses)				
15	Equity In Earnings (Losses) of Affiliated Companies (lines 13 and 14)				
16	Total Other Income and Deductions				
17	Ordinary Income Before Federal Income Taxes (line 4 (+/-) line 16)				
18	(Less) Income Taxes on Income from Continuing Operations (670)				
19	(Less) Prov. for Deferred Taxes Losses (671)				
20	Income (Loss) From Continuing Operations (lines 17 through 19)				

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Name of Respondent	This Report is: _____An Original _____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

		Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day/Year) (e)
21	**Discontinued Operations**				
22	Income (Loss) from Operations of Discontinued Segments (675) (Less applicable income taxes)				
23	Gain (Loss) on Disposal of Discontinued Segments (676)				
24	Total Income (Loss) from Discontinued Operations (lines 22 and 23)				
25	Total Income (Loss) before Extraordinary Items (lines 20 and 24)				
26	**EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES**				
27	Extraordinary Items-Net-(Debt) Credit (680)				
28	Income Taxes on Extraordinary Items - Debit (Credit) (695)				
29	Provision for Deferred Taxes Extraordinary Items (696)				
30	Total Extraordinary Items (lines 27 through 29)				
31	Cumulative Effect of Changes in Accounting Principles - Net of taxes(697)				
32	Total Extraordinary Items and Accounting Changes				
33	Net Income (Loss) (Lines 25 and 32)				

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Name of Respondent	This Report is: ____An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	Item (a)	Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day/Year) (e)
34	UNAPPROPRIATED RETAINED INCOME				
35	Balance at Beginning of Period				
36	CREDITS				
37	Net Balance Transferred From Income (700)				
38	Prior Period Adjustments to Beginning Retained Income (705)				
39	Other Credits (710)				
40	TOTAL (lines 34 through 39)				
41	DEBITS				
42	Net Balance Transferred From Income (700)				
43	Other Debits (720)				
44	Appropriations of Retained Income (740)				
45	Dividend Appropriations of Retained Income (750)				
46	TOTAL (lines 42 Through 45)				
47	Net Increase (Decrease) During the period (line 40 minus 46)				
48	Balances at End of Year (line 35 and 47)				
49	Balance From Line 58				
50	TOTAL Unappr.Retained Income and Equity in Undistr. Earnings Period(lines 48 and 49)				
51	AMOUNT OF ASSIGNED INCOME TAXES				
52	Account 710				
53	Account 720				
54	EQUITY IN UNDISTRIBUTED EARNINGS (LOSSES) OF AFFILIATED COMPANIES				
55	Balance at Beginning of Period				
56	Balance Transferred From Income				
57	Other Credits (Debits)				
58	Balance at End of Period				

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Name of Respondent	This Report is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF CASH FLOWS

(1) Codes to be used: (a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt;(c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.

(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the Balance Sheet.

(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.

(4) Investing Activities: Include at Other net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

	Description (See Instruction for Explanation of Codes).	Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
1	**Net Cash Flow From Operating Activities:**		
2	Net Income		
3	**Noncash Charges (Credits) to Income:**		
4	Depreciation		
5	Amortization		
6	Deferred Income Taxes		
7	Net (Increase) Decrease in Receivables		
8	Net (Increase) Decrease Inventory		
9	Net Increase (Decrease) in Payables and Accrued Expenses		
10	Other (Footnote Detail)		
11	Net Cash Provided by (Used in) Operating Activities (lines 2 through 10).		

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Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	Description (See Instruction for Explanation of Codes).	Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
12	Cash Flows From Investment Activities		
13	Construction and Acquisition of Plant (Including Land)		
14	Gross Additions to Carrier Property		
15	Gross Additions to Non-Carrier Property		
16	Other (Footnote Detail)		
17	Cash Outflows for Plant (lines 14 through 16)		
18	Acquisition Of Other Noncurrent Assets (d)		
19	Proceeds From Disposal of Noncurrent Assets (d)		
20	Investments in and Advances to Associated and Subsidiary Companies		
21	Contributions and Advances from Associated and Subsidiary Companies		
22	Disposition of Investments in (and Advances to) Associated and Subsidiaries Companies		
23	Purchase of Investment Securities (a)		
24	Proceeds from Sales of Investment Securities (a)		
25	Loans Made or Purchased		
26	Collections on Loans		
26	Net (Increase) Decrease in Receivables		
28	Net (Increase) Decrease in Inventory		
29	Net Increase (Decrease) in Payables and Accrued Expenses		
30	Other (Footnote Detail)		
31	Net Cash Provided by (Used in) Investing Activities (Total of Lines 18 through 30)		

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

		Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
32	**Cash Flow From Financing Activities**		
33	**Proceeds from Issuance of**		
34	Long-term debt (b)		
35	Capital Stock		
36	Other (Footnote Detail)		
37	Net Increase in Short-term Debt (c)		
38	Other (Footnote Detail):		
39	Cash Provided by Outside Sources (lines 34 through 38)		
40	**Payment for Retirement of**		
41	Long-term Debt (b)		
42	Capital Stock		
43	Other (Footnote Detail):		
44	Net Decrease in Short-Term Debt (c)		
45	Dividends on Capital Stock		
46	Other (Footnote Detail):		
47	Net Cash Provided by (Used in) Financing Activities (Lines 40 through 46)		
48	Net Increase (Decrease) in Cash and Cash Equivalents (lines 11, 31, and 47)		
49	Cash and Cash Equivalents at Beginning of Period		
50	Cash and Cash Equivalents at End of Period		

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.

2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.

3. For each category of hedges that have been accounted for as "fair value hedges," report the accounts affected and the related amounts in a footnote.

	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (b)	Minimum Pension Liability adjustment (net amount) (c)	Foreign Currency Hedges (d)	Other Adjustments (e)
1	Balance of Account 77 at Beginning of Preceding Quarter				
2	Preceding Quarter Reclassification from Account 77 to Net Income				
3	Preceding Quarter Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 77 at End of Preceding Quarter/ Beginning of Current Quarter.				
6	Current Quarter Reclassification From Account 77 to Net Income				
7	Current Quarter Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 77 at End of Current Quarter				

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Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report Is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES (continued)

	Other Cash Flow Hedges [Insert Category] (f)	Other Cash Flow Hedges [Insert Category] (g)	Totals for each category of items recorded in Account 219 (h)	Net Income (Carried Forward from Page 117, Line 72) (i)	Total Comprehensive Income (j)
1					
2					
3					
4					
5					
6					
7					
8					
9					

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

NOTES TO FINANCIAL STATEMENTS

(1) Respondent must provide in the notes sufficient disclosures so as to make the interim information not misleading. Disclosures which would substantially duplicate the disclosures contained in the most recent FERC Annual Report may be omitted.

(2) Disclosures shall be provided where events subsequent to the end of the most recent year have occurred which have a material effect on the respondent. Respondent must include in the notes significant changes since the most recently completed year in such items as: accounting principles and practices; estimates inherent in the preparation of the financial statements; status of long-term contracts; capitalization including significant new borrowings or modifications of existing financing agreements; and changes resulting from business combinations or dispositions. However were material contingencies exist, the disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(3) Finally, if the notes to the financial statements relating to the respondent appearing in the quarterly report to the stockholders are applicable and furnish the data required by the above instructions, such notes may be included herein.

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

OPERATING REVENUES

Report the respondent's pipeline operating revenues year to date, classified in accordance with the Uniform System of Accounts.

	Account (a)	Crude Oil Year to Date Month/Day/Year (b)	Products Year to Date Month/Day/Year (c)	Year to Date Month/Day/Year (b)+(c)=(d)
1	(200) Gathering Revenues			
2	(210) Trunk Revenues			
3	(220) Delivery Revenues			
4	(230) Allowance Oil Revenues			
5	(240) Storage and Demurrage Revenue			
6	(250) Rental Revenue			
7	(260) Incidental Revenue			
8	TOTAL (lines 1 through 7)			

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

OPERATIONS, MAINTENANCE, AND GENERAL EXPENSES

Report the respondent's pipeline operating, maintenance and general expenses at the end of quarter, classified in accordance with the Uniform System of Accounts.

	Operating Expense Accounts (a)	Crude Oil Gathering Year to Date Month/Day/Year (b)	Crude Oil Trunk Year to Date Month/Day/Year (c)	Crude Oil Delivery Year to Date Month/Day/Year (d)	Total Year to Date Month/Day/Year (E)=(b)+(c)+(d)
1	OPERATIONS AND MAINTENANCE				
2	(300) Salaries and Wages				
3	(310) Materials and Supplies				
4	(320) Outside Services				
5	(330) Operating Fuel and Power				
6	(340) Oil Losses and Shortages				
7	(350) Rentals				
8	(390) Other Expenses				
9	Total (lines 2 through 8)				
10	GENERAL				
11	(500) Salaries and Wages				
12	(510) Materials and Supplies				
13	(520) Outside Services				
14	(530) Rentals				
15	(540) Depreciation and Amort.				
16	(550) Employee Benefits				
17	(560) Insurance				
18	(570) Casualty and Other Losses				
19	(580) Pipeline Taxes				
20	(590)Other Expenses				
21	Total General Expense (lines 11 through 20)				
22	TOTAL (lines 9 and 21)				

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

OPERATIONS, MAINTENANCE AND GENERAL EXPENSES (CONTINUED)

Report the respondent's pipeline operating, maintenance and general expenses at the end of quarter, classified in accordance with the Uniform System of Accounts.

	Operating Expense Accounts	Products Trunk Year to Date Month/Day/Year (f)	Products Delivery Year to Date Month/Day/Year (g)	Products Year to Date Month/Day/Year (h)=(f)+(g)	Total Year to Date Month/Day/Year (i)=(e)+(h)
1	**OPERATIONS AND MAINTENANCE**				
2	(300) Salaries and Wages				
3	(310) Materials and Supplies				
4	(320) Outside Services				
5	(330) Operating Fuel and Power				
6	(340) Oil Losses and Shortages				
7	(350) Rentals				
8	(390) Other Expenses				
9	Total (linea 2 through 8)				
10	**GENERAL**				
11	(500) Salaries and Wages				
12	(510) Materials and Supplies				
13	(520) Outside Services				
14	(530) Rentals				
15	(540) Depreciation and Amort.				
16	(550) Employee Benefits				
17	(560) Insurance				
18	(570) Casualty and Other Losses				
19	(580) Pipeline Taxes				
20	(590)Other Expenses				
21	Total General Expenses (Lines 11 through 20)				
22	TOTAL (lines 9 and 21)				

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ____ An Original ____A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATISTICS OF OPERATIONS (page 1 of 2)

1. Give particulars (details) by States of origin for crude oil and for each kind of product received year to date and totals only (i.e. no State detail) for number of barrels of crude oil and of each kind of product delivered out of the pipeline year to date. Classify and list in column (a) by States of origin the refined products transported in the following order: 29111, Gasoline, jet fuels, and other high volatile petroleum fuels, except natural gasoline; 29112, Kerosene; 29113, Distillate fuel oil; 29114, Lubricating and similar oils and derivatives; 29117, Residual fuel oil and other low volatile petroleum fuels; 29112, Products of petroleum refining, n.e.c. - Specify.

	State of Origin	Number of Barrels Received From Connecting Carriers (b)	Number of Barrels Received ORIGINATED On Gathering Lines (c)	Number of Barrels Received ORIGINATED On Trunk Lines (d)	Total Received (e)=(b)+(c)+(d)
1	CRUDE OIL				
2					
3					
4					
5	TOTAL				
6	PRODUCTS (STATE OF ORIGIN AND CODE)				
7					
8					
9					
10					
11	TOTAL				

Docket No. RM03-8-000
Appendix B: Form 3Q and Form6Q Samples.

Name of Respondent	This Report is: ___ An Original ___ A Resubmission	Date of Report Month/Day/Year	For the Quarter Ending Month/Day/Year

STATISTICS OF OPERATIONS (page 2 of 2)

2. In column (b) show all oils received by the respondent from connecting carriers reporting to the Commission. In column (c) report all oils originating on respondent's gathering lines and in column (d) all oils received into respondent's trunk line, except receipts shown in column (b) and (c). Any barrels received into a pipeline owned by the respondent, but operated by others, should be reported separately.

3. Entries in column (e) should be the sum of columns (b), (c) and (d). In column (f) show all oils delivered to connecting carriers reporting to the Commission. In column (g) show all oils terminated on the respondent's gathering lines, and in column (h) all oils delivered out of the respondent's pipeline, except deliveries shown under columns (f) and (g).

	State of Origin	Number of Barrels Delivered Out to Connecting Carriers (f)	Number of Barrels Delivered Out TERMINATED On Gathering Lines (g)	Number of Barrels Delivered Out TERMINATED On Trunk Lines (h)	Total Delivered Out (i)=(f)+(g)+(h)
1	CRUDE OIL				
2					
3					
4					
5	TOTAL				
6	PRODUCTS (STATE OF ORIGIN AND CODE)				
7					
8					
9					
10					
11	TOTAL				

Docket No. RM03-8-000
Appendix C: Form 1, 1-F, 2, 2A and 6 Schedules

Name of Respondent	This Report is: ___ An Original ___A Resubmission	Date of Report	Year of Report

FORMS 1, 1-F, 2, 2-A and 6 ANNUAL REPORT CORPORATE OFFICER CERTIFICATION

The undersigned officer certifies that:

I have read this FERC Annual Financial Report:
Based on my knowledge this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances such statements were made, not misleading with respect to the period covered by this report.

Based on my knowledge the financial statements, and other financial information (Comparative Balance Sheet, Statement of Income for the Year, Statement of Retained Earnings for the Year, Statement of Cash Flows, Statement of Accumulated Comprehensive Income and Hedging Activities, and Notes to the Financial Statements) included in this report conform in all material respects with the Commission's Uniform System of Accounts, as of, and for, the periods presented in this report.

I am responsible for establishing and maintaining internal accounting controls as defined by the Commission. I have designed such internal accounting controls to ensure that material information relating to the respondent and its subsidiaries, to the extent that the respondent has subsidiaries, is made know to me by others within those entities, particularly during the period in which this report is being prepared. I have evaluated the effectiveness of internal accounting controls as of a date within 90 days prior to the period in which this report (evaluation date). I have presented in this report my conclusions about the effectiveness of the internal accounting controls based on my evaluation as of the evaluation date.

I have disclosed, based on my most recent evaluation, to the respondent's auditors and the audit committee or persons performing similar functions, to the extent that respondent has an audit committee or persons performing similar functions, that all significant deficiencies in the design or operation of internal accounting controls which could adversely affect the respondent's ability to record, process, summarize and report financial data and have identified for the respondent's auditors any material weaknesses in disclosure controls and procedures and any fraud, whether or not material, that involves management or other employees who have a significant role in the respondent's internal accounting controls.

I have indicated in this report whether or not there were significant changes in internal accounting controls and procedures or in other factors that could significantly affect internal accounting controls and procedures subsequent to the date of my most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

In addition, I have examined the remaining schedules contained in this report, to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

Line No.	Name of Certifying Official	Signature	Title	Date
1				

Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Docket No. RM03-8-000
Appendix C: Form 1, 1-F, 2, 2A and 6 Schedules

Name of Respondent	This Report is:	Date of Report	Year of Report
_____	___ An Original ___ A Resubmission		

PURCHASES AND SALES OF ANCILLARY SERVICES

Report the amounts for each type of ancillary service shown in column (a) for the year as specified in Order No. 888 and defined in the respondents Open Access Transmission Tariff.

In columns for usage, report usage-related billing determinant and the unit of measure.

(1) On line 1 columns (b), (c), (d), (e), (f) and (g) report the amount of ancillary services purchased and sold during the year.

(2) On line 2 columns (b) (c), (d), (e), (f), and (g) report the amount of reactive supply and voltage control services purchased and sold during the year.

(3) On line 3 columns (b) (c), (d), (e), (f), and (g) report the amount of regulation and frequency response services purchased and sold during the year.

(4) On line 4 columns (b), (c), (d), (e), (f), and (g) report the amount of energy imbalance services purchased and sold during the year.

(5) On lines 5 and 6, columns (b), (c), (d), (e), (f), and (g) report the amount of operating reserve spinning and supplement services purchased and sold during the period.

(6) On line 7 columns (b), (c), (d), (e), (f), and (g) report the total amount of all other types ancillary services purchased or sold during the year. Include in a footnote and specify the amount for each type of other ancillary service provided.

	Type of Ancillary Service (a)	Amount Purchased For the Year (b)	(c)	(d)	Amount Sold For the Year (e)	(f)	(g)
		Usage – Related Billing Determinant			Usage – Related Billing Determinant		
		Number of Units	Unit of Measure	Dollars	Number of Units	Unit of measure	Dollars
1	Scheduling, System Control and Dispatch						
2	Reactive Supply and Voltage						
3	Regulation and Frequency Response						
4	Energy Imbalance						
5	Operating Reserve-Spinning						
6	Operating Reserve-Supplemental						
7	Other						
8	Total						

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Federal Register

Thursday,
February 26, 2004

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 606, et al.
Bar Code Label Requirements for Human Drug Products and Biological Products; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 606, and 610

[Docket No. 2002N–0204]

Bar Code Label Requirement for Human Drug Products and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a new rule to require certain human drug and biological product labels to have bar codes. The bar code for human drug products and biological products (other than blood, blood components, and devices regulated by the Center for Biologics Evaluation and Research) must contain the National Drug Code (NDC) number in a linear bar code. The rule will help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time. The rule also requires the use of machine-readable information on blood and blood component container labels to help reduce medication errors.

DATES: *Effective Date*: This rule is effective on April 26, 2004.

Compliance Dates: Drug products that receive approval on or after the rule's effective date must comply with the bar code requirement within 60 days after the drug's approval date. Drug products that received approval before the final rule's effective date must comply with the bar code requirement within 2 years after the final rule's effective date. Specific information on how the rule will be implemented can be found in section II.I of this document.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In the **Federal Register** of March 14, 2003 (68 FR 12500), FDA (we) published a proposed rule that would require certain human drug and biological product labels to have a linear bar code (the March 2003 proposal). The proposal would require the bar code to contain the drug's NDC number. For blood and blood components, the proposal would require the use of machine-readable information on the container label. Our intent was to help reduce the number of medication errors in hospitals and health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug, in the right dose and right route of administration, is being given to the right patient at the right

time. For blood and blood components, the machine-readable information would perform a similar function and help prevent errors such as transfusion errors.

The preamble to the March 2003 proposal described the events that led us to issue the proposal (see 68 FR 12500 through 12503), and we refer readers to that preamble if they wish to obtain details on the events, recommendations, meetings, and literature that shaped the proposed rule. In brief, medication errors are a serious public health problem, and putting bar codes on drug products is expected to significantly reduce medication errors. Medication errors can occur at several points from the time the physician prescribes the drug to a patient to the time when the patient receives the drug. For example, the physician may write a prescription for the right drug, but in the wrong dose. The pharmacist might misread the prescription and provide the wrong drug, or read the prescription correctly and dispense the wrong drug. The health care professional administering the drug might give it to the wrong patient or give it to the right patient, but at the wrong time or in the wrong dose. Although most medication errors do not result in harm to patients, medication errors can result and have resulted in serious injury or death. Medication errors also represent a significant economic cost to the United States; one article published in 2001 (Ref. 30) estimated the direct cost to be $177.4 billion, while another (Ref. 31) estimated the cost of preventable adverse drug events in hospitalized patients to be $5,857 for each adverse drug event, with the estimated annual costs for preventable adverse drug events for a 700-bed hospital to be $2.8 million.

Bar codes can help reduce or detect potential medication errors by enabling health care professionals to check whether they are giving the right drug via the right dose and right route of administration to the right patient at the right time. The bar codes would be part of a system, along with bar code scanners and computerized databases, where:

- A patient would have his or her drug regimen information entered into a computerized database.
- Each drug would have a bar code. The bar code would provide unique, identifying information about the drug that is to be dispensed to the patient.
- In hospitals, health care professionals, such as pharmacists and nurses, would use bar code scanners (also called bar code readers) to read the bar code on the drug before dispensing the drug to the patient and to read a bar coded wristband on the patient before giving the drug to the patient. In an outpatient setting, the health care professional (such as a pharmacist) could scan the bar code on the drug and compare the scanned information against the patient's electronic prescription information before giving the drug to the patient.
- The bar code scanner's information would go to the computer where it would be compared against the patient's drug regimen information to check whether the right patient is receiving the right drug (including the right dose of that drug in the right route of administration). The system could also be designed to check whether the patient is receiving the drug at the right time.
- If the identity of the health care professional administering the drug were desired, each health care professional could also have a bar code. The health care professional would scan his or her own bar code before giving the drug to the patient.

Bar codes can also complement other efforts to reduce medication errors, such as computer physician order entry (CPOE) systems (where a physician enters orders into a computer instead of writing them on paper, and the order can be checked against the patient's records for possible drug interactions, overdoses, and patient allergies) and pharmacy-based computer systems that use a bar-coded NDC number to verify that a consumer's prescription is being dispensed with the correct drug.

We (FDA) held a public meeting on July 26, 2002, to discuss a possible rule to require bar codes on human drug products, blood, and blood components (see 67 FR 41360, June 18, 2002). Nearly 400 individuals attended that public meeting, and many submitted comments to us. We then published the March 2003 proposal. The March 2003 proposal would create a new § 201.25 (21 CFR 201.25) entitled "Bar Code Label Requirements." (For biological products other than blood and blood components, the bar code requirement would exist through a cross-reference at a new § 610.67 (21 CFR 610.67.) The proposal also would amend the preexisting, voluntary provision regarding "machine-readable" symbols on blood and blood component container labels at § 606.121(c)(13) (21 CFR 606.121(c)(13) to require the use of machine-readable information.

We received approximately 190 comments on the proposal, and almost all comments supported the rule in whole or in part. For example, one comment said that "FDA is to be highly commended for both the proposed regulation and the process leading to it" while another said that the rule was an "excellent step toward reducing medication errors." Other comments reported favorably on their own experiences with bar codes on drugs. One comment from a hospital said that the hospital had recently begun bedside verification of medications, using bar codes, and that the bar codes were a valuable tool for reducing medication errors. A comment from a health professional noted that his health care system used bar codes to dispense patient medications and those using robots to dispense medications reduced the manual error dispensing rate by 50 percent.

A few comments, however, were skeptical about the value of bar coding drugs. For example, one comment described problems associated with installing new technology in old buildings. The comment also feared that our rule would cause hospitals to lose their accreditation if they did not adopt bar coding technology. Another comment expressed concern about the impact on nurses' workloads. The comment said bar codes on drugs could cause nurses to spend more time administering medications because of scanning errors or problems with the bar code, but concluded that "the ultimate outcomes will be worth the investment for the manufacturers, the providers, and ultimately the patients."

After reviewing the comments, FDA made several changes to the rule. The principal changes between the proposed and final rule are as follows:

Proposed Rule	Final Rule
Would apply to prescription drugs (except for samples) and to over-the-counter drugs commonly used in hospitals and dispensed pursuant to an order	Applies to most prescription drugs (except for samples, allergenic extracts, intrauterine contraceptive devices that are regulated as drugs, medical gases, radiopharmaceuticals, low-density polyethylene form fill and seal containers, and prescription drugs sold directly to patients) and to over-the-counter drugs commonly used in hospitals and dispensed under an order. We explain the reasons for exempting certain prescription drugs in section II.B.4 of this document.
Did not contain a general exemption provision	Contains a limited, general exemption provision. We explain the reasons for creating a general exemption provision in section II.B.4.c of this document.
Would require a linear bar code that meets Uniform Code Council standards	Requires a linear bar code that meets Uniform Code Council standards or Health Industry Business Communications Council standards. We explain the reasons for this change at section II.D.1 of this document.
Would create a 3-year implementation period	Establishes different compliance dates depending on when a drug was approved. In general, the rule is effective 60 days after date of publication in the **Federal Register**. If a drug receives approval on or after the effective date, it must comply with the bar code requirement within 60 days of the drug's approval date. If the drug received approval before the rule's effective date, it must comply with the bar code requirement within 2 years of the final rule's effective date. For blood and blood components, a 2 year compliance date exists. We explain the implementation of this rule at section II.I of this document.

We describe and respond to the comments in section II of this document. To make it easier to identify comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We have also numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received.

II. Comments on the Proposed Rule and FDA's Responses

A. Who Is Subject to the Bar Code Requirement? (§ 201.25(a))

Under proposed § 201.25(a), manufacturers, repackers, relabelers, and private label distributors of human prescription drug products and over-the-counter (OTC) drug products regulated under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (PHS Act) would be subject to the bar code requirement unless they are exempt from the establishment registration and drug listing requirements in section 510 of the act (21 U.S.C. 360).

In the preamble to the proposed rule (68 FR 12500 at 12503), we acknowledged that some hospitals place bar codes on drugs themselves and have reduced their medication error rates significantly, but we stated that requiring manufacturers, repackers, relabelers, and private label distributors to bar code their own products should be more efficient and result in better quality bar codes because manufacturers, repackers, relabelers, and private label distributors generally have sophisticated manufacturing processes, labeling machinery, and quality control systems that hospitals cannot afford. We added that bar coding by third parties (such as hospitals) could increase the possibility of a label error through the attachment of the wrong bar code and could lead to inconsistent bar code quality; in fact, one organization that submitted a comment at our public meeting on July 26, 2002, estimated the error rate in hospital labeling to be approximately 17 percent nationwide.

We also stated that requiring manufacturers, repackers, relabelers, and private label distributors to bar code their own products and to use the same bar coding standard would result in a more uniform bar coding system that could be used regardless of a patient's or hospital's location in the United States, and that this uniformity would also make it easier for health care professionals to train themselves on bar coding procedures and technique and make it easier and less expensive for hospitals to buy bar coding equipment.

(Comment 1) One comment stated that hospital pharmacies should be subject to the bar code requirements. The comment explained that hospitals frequently compound drugs for pediatric use and that omitting such compounded drugs from the rule would leave "infants and children without the protections that bar codes are intended to provide."

Another comment argued that we should exempt nuclear pharmacies from the rule. The comment claimed that a bar code requirement would subject hospital personnel and employees to additional radiation (because they would have to scan the bar codes).

(Response) Section 510(g)(1) of the act states that pharmacies

> which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of practitioners in the course of their professional practice, and which do not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail

do not have to register their establishments or list their products with FDA. Thus, if a pharmacy is exempt, under section 510(g)(1) of the act, from our establishment registration and drug listing requirements, the pharmacy is not subject to the bar code requirements.

We also note that drugs compounded at pharmacies generally would not have NDC numbers. NDC numbers are assigned to drugs that are listed under section 510(j) of the act, but, as we

explained earlier, section 510(g)(1) of the act would exempt a pharmacy from the registration and listing requirements. Consequently, a compounded drug would not be listed, would not be assigned an NDC number, and would therefore lack the information required to be in the bar code.

Regarding the comment claiming that a bar code requirement would lead to greater radiation exposure for nuclear pharmacy employees, the comment did not provide any evidence or data to show that using a bar code scanner would constitute a significant or even appreciable risk or that bar code scanners would undermine or compromise any existing measures taken to protect such employees from radiation exposure. Nevertheless, as we explain in our response to comment 24 in section II.B.4.b. of this document, we have decided to exempt radiopharmaceuticals from the bar code requirement.

(Comment 2) One comment said we should exempt hospitals, institutional providers, and large clinics from the rule. The comment interpreted the rule's reference to repackers and relabelers as covering hospitals and other providers and said that hospitals and other providers would still have to repack and relabel drugs (such as intravenous solutions and mixes). The comment declared it would be "unrealistic" to expect hospitals and other providers to obtain NDC labeler codes and "participate in the NDC system."

In contrast, several comments said we should extend the rule to hospitals or expressed disappointment that the rule did not require hospitals to use bar codes. For example, one comment said the Federal Government should establish requirements so that hospitals would have to adopt technologies to use the bar codes. Another comment said that we should "encourage," but not require, hospitals to use bar code technology. The comment said that most hospitals would find it difficult to adopt bar code technology due to the age of their buildings and their construction.

Another comment asked us to clarify that relabeled, repackaged, or privately labeled drugs must have their own NDC numbers. The comment said that hospitals and pharmacies must not use the same NDC number that the drug's manufacturer used.

(Response) Some comments appear to have misinterpreted the rule. Repackers, relabelers, and private label distributors that are exempt from the establishment registration and drug listing requirements in section 510 of the act (see 68 FR 12500 at 12503; see also proposed § 201.25(a)) are not subject to the bar code requirements. Hospitals, clinics, and public health agencies that "maintain establishments in conformance with any applicable local laws regulating the practices of pharmacy or medicine and that regularly engage in dispensing prescription drugs * * * upon prescription of practitioners licensed by law to administer these drugs to patients under their professional care" are exempt from the establishment registration requirements (see § 207.10(b) (21 CFR 207.10(b)); as a result, such hospitals, clinics, and public health agencies are also exempt from the bar code requirements.

The rule also does not require hospitals to use or adopt bar code technology. Hospitals are free to decide whether to take advantage of the bar codes on human drug and biological products. Our legal authority, in this case, extends to the products and not to hospitals. Nevertheless, we advise hospitals and other potential bar code users that we are aware of electromagnetic interference (EMI) problems associated with the use of wireless technology products, such as cell phones, local area networks (LANs), and personal digital assistants (PDAs), in the vicinity of electrically-powered medical devices. EMI problems are a particular concern in health care facilities as well as home care settings. We caution that wireless bar code scanning technologies may present similar concerns about their electromagnetic compatibility (EMC) with other hospital equipment. We encourage hospitals and other potential bar code users to consider EMC with medical devices when developing their policies and implementing a bar code scanning system. Additional information about EMC with medical devices is available at *http://www.fda.gov/cdrh/emc.*

We recommend that interested parties gather information and conduct research about wireless bar code scanners (or other scanning or reading equipment) and their EMI potential on other medical devices. We also encourage voluntary standards development organizations, such as the Association for the Advancement of Medical Instrumentation, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American National Standards Institute (ANSI), and the International Electrotechnical Commission (IEC) to work with us toward the goal of coordinated policies, research, and standards development to ensure a base level of EMC in all health care facilities. This would include recommendations for safely deploying wireless technology in hospitals and health care facilities.

As for entities that repack or relabel drugs, if a repacker, relabeler, or private label distributor is subject to the establishment registration requirement at section 510 of the act, then that person would also be subject to the bar code requirements. We would expect that repacker, relabeler, or private label distributor to use its own NDC numbers on its products. In other words, a manufacturer, repacker, relabeler, or private label distributor must not use an NDC number that is not assigned to it. Use of another establishment's NDC number in the bar code would cause the product to be misbranded under section 502(a) of the act (21 U.S.C. 352(a)) because the drug's label would be misleading.

B. What Products Must Have a Bar Code? (§ 201.25(b))

Proposed § 201.25(b) would require bar codes on the labels of:

- All human prescription drug products, excluding samples;
- Biological products; and
- OTC drug products that are commonly used in hospitals and dispensed pursuant to an order.

We proposed to exclude prescription drug samples because most samples are given to patients at physicians' offices, and we did not believe that physicians or patients would have or be inclined to buy bar code scanners for their own use in the immediate future. We invited comment as to whether we should require bar codes on prescription drug samples and sought cost and benefit data associated with placing bar codes on such samples (see 68 FR 12500 at 12505 and 12529).

As for OTC drug products, the phrase "commonly used in hospitals" reflected our primary focus of helping to reduce the number of medication errors occurring in hospitals. We added the phrase, "dispensed pursuant to an order," because we knew that some products that are regulated as OTC drug products, such as mouth rinses and toothpastes, are not likely to contribute to medication errors, and are not dispensed in hospitals pursuant to a physician's or health care professional's order. Thus, the phrase, "dispensed pursuant to an order," was designed to capture those OTC drug products that are likely to contribute to medication errors. The preamble to the proposed rule invited comment as to whether there was a better way to describe the types of OTC drug products that should have a bar code (see 68 FR 12500 at 12506 and 12529).

The preamble to the March 2003 proposal also invited comment on whether any specific product or class of products should be exempt from the rule and the reasons for an exemption (see 68 FR 12500 at 12511 through 12512 and 12529).

1. Should Prescription Drug Samples Be Excluded From the Rule?

(Comment 3) Several comments said we should require bar codes on prescription drug samples. One comment stated that bar codes on samples would make it easier to monitor inventory or distribution to patients. Another comment said that prescription drug samples are "commonly dispensed in numerous hospital settings," such as emergency departments, and that "the very nature of treatment and medication administration (in an emergency department) presents unique challenges for which bar coding would prove instrumental." The comment also stated that JCAHO requires institutions to have policies and procedures in place to control drug samples and requires quick retrieval of recalled drugs, so hospitals must keep detailed records, "often including lot and expiration date, of drug samples dispensed to patients." Another comment suggested that, rather than require bar codes on all prescription drug sample labels, we could simply require bar codes on the outer package because patients receive the entire package rather than a portion of a drug sample.

Other comments also wanted bar codes on prescription drug samples for reasons unrelated to medication errors. For example, one comment said that bar codes on prescription drug samples would reduce the amount of time spent tracking samples. Another comment said that bar codes could help pharmacists identify samples that patients present to them; the comment said that patients sometimes bring prescription drug samples to pharmacists because they wish to continue receiving the same drug. A third comment said clinicians might be confused if they had to follow one procedure for bar coded prescription drugs and a different procedure for nonbar coded prescription drug samples.

Conversely, several comments agreed with our decision to exclude prescription drug samples from the bar code requirement. The comments said there would be no benefit to bar coding such products, although one comment suggested that we conduct a study to see how prescription drug samples are used in institutional settings and to determine whether they should be the subject of a future rulemaking. Another comment agreed that bar coding prescription drug samples would not enhance patient safety, but said that one possible benefit would be that manufacturers could monitor disbursement of prescription drug samples.

Other comments suggested that bar codes on samples could be voluntary or noted that bar codes can fit easily on prescription drug samples because their packaging is often larger than unit-dose packaging (so that it is technologically feasible to put bar codes on prescription drug packaging) and that the Uniform Code Council (UCC) system requires bar codes on promotional products such as samples.

(Response) We decline to require bar codes on prescription drug samples. The comments did not offer any data to contradict our position that most prescription drug samples are dispensed by physicians in their offices and that physicians and patients will not be inclined to buy or use bar code scanners. We realize that bar codes could help with inventory control and help monitor distribution of samples, but those objectives have no bearing on medication errors or drug safety and are outside the scope of this rule.

Although one comment did claim that prescription drug samples are commonly dispensed in hospitals, particularly in emergency departments, we could not determine whether the comment meant to say that hospitals administer samples to patients or whether they simply provide samples to patients to take home. We also could not determine whether such practices are common in hospitals, but note that, under section 503(d) of the act (21 U.S.C. 353(d), hospitals may distribute prescription drug samples at the direction of a practitioner who is licensed to prescribe such drugs and who received such samples. (However, sections 301(t) (21 U.S.C. 331(t)) and 503(c) of the act prohibit the sale and purchase of drug samples.) If we assume that the comment pertained to distribution of samples in hospitals, then we reiterate that the physicians directing the distribution of the samples and the patients receiving such samples will not be inclined to buy or use bar code scanners. Consequently, requiring bar codes on prescription drug samples would have little benefit insofar as medication errors are concerned.

As for the possible use of bar codes in helping pharmacists identify drugs presented by patients, we note that part 206 (21 CFR part 206) requires imprinting on solid oral dosage forms. The code imprint was designed to help identify solid oral dosage forms, particularly in emergency situations, and to help consumers and health care professionals identify drugs (see 58 FR 47958, September 13, 1993; part 206). Thus, drug imprinting already exists to help emergency departments, and pharmacists can also use the imprint codes to help identify samples presented to them by patients.

As for the voluntary use of bar codes on prescription drug samples, we do not object to such use.

2. Which OTC Drug Products Must Have a Bar Code?

(Comment 4) Several comments focused on OTC drug products. One comment agreed that only OTC drug products commonly used in hospitals and dispensed pursuant to an order should be required to have bar codes. In contrast, an OTC drug firm stated that the rule's description of OTC drug products might be clear to hospitals, but was unclear to OTC drug manufacturers. The comment said that, instead of describing the OTC drug products that must have a bar code, we should list OTC drug products, categories of OTC drug products, and/or ingredients that do not require bar codes. The comment said such a list would give "clear direction" as to those OTC drug products that are subject to a bar code requirement.

Two other comments expressed similar views on listing OTC drugs. One comment said we should list categories of OTC drug products that would not have to have a bar code, whereas another comment said we should list the types of OTC drugs that would or should be subject to a bar code requirement.

(Response) We decline to revise the rule to describe the OTC drug products that would be subject to §§ 201.25 and 610.67 in terms of specific drugs, categories, or ingredients. The comments' suggestion that we list OTC drug products, categories, and/or ingredients would effectively force us to engage in case-by-case analyses to decide whether a particular OTC drug, category, and/or ingredient should or should not have a bar code and force us to engage in repeated rulemakings each time we wanted to modify the list. Additionally, parties that objected to listing a particular OTC drug product or class could attempt to challenge our decisions, creating an added burden on our resources. The result would be a cumbersome, time-consuming, resource-intensive, and inefficient administrative process that would detract from, rather than contribute to, efforts to improve patient safety. The original proposal's

formulation makes the distinction we are trying to draw and places the burden on manufacturers, repackers, relabelers, and private label distributors of OTC drug products to determine whether their products are commonly used in hospitals and dispensed under an order.

We have, however, re-worded § 201.25(a) to refer to "over-the-counter (OTC) drug products" and to use the shorter term of "OTC drug products" in the remainder of § 201.25. This change corrects an oversight in the proposed rule because it referred to "OTC drug products" without explaining what "OTC" meant.

(Comment 5) Proposed § 201.25(b) had explained that an OTC drug is "commonly used in hospitals" if it is "packaged for institutional use, labeled for institutional use, or marketed, promoted, or sold to hospitals." One comment stated that the rule's reference to OTC drug products packaged and labeled for "institutional" use was confusing because the rule also referred to "hospitals." Thus, the comment said we should clearly define the sites to which bar coded products must be distributed and define "hospital" and "institution."

Two other comments suggested that we interpret "commonly used in hospitals" as "packaged for hospital use, labeled for hospital use, or marketed, promoted, or sold to hospitals." Another comment said the interpretation of the phrase, "commonly used in hospitals," should depend on a combination of two or more "indicators," such as "packaging designed for institutional use, package labeling for institutional use, or marketing or promotion (including through sales catalogues) to hospitals." The comment explained that our rule would "inadvertently sweep a far larger range of OTC medicines into the rule's coverage." It also asked us to clarify that an OTC drug manufacturer would not be responsible for bar coding the drug if it was "marketed, promoted, or sold to hospitals" by someone else.

(Response) The proposed rule referred to "institutional use" because we knew that some OTC drug packages and labels state that the drug is "for institutional use" or "for institutional use only" (see 68 FR 12500 at 12505). We did not intend to imply that the rule would cover OTC drug products that were commonly used in "institutions" other than hospitals, and we have revised § 201.25(b) to replace "institutional use" with "hospital use." However, we also have added the parenthetical phrase, "or uses similar terms" after "labeled for hospital use" to indicate that persons subject to the rule should adopt a common sense interpretation of § 201.25(b). For example, a manufacturer who labels an OTC drug "for institutional use only" and sells that OTC drug to hospitals should comply with the bar code requirement notwithstanding the fact that it labeled the drug "for institutional use only" instead of "for hospital use only." In other words, we do not consider the OTC drug label's use of the word "institution" or its avoidance of the word "hospital" as being the determining factor in whether an OTC drug must comply with the bar code requirement.

As for defining what constitutes a "hospital," the preamble to the proposed rule interpreted the word "hospital" as "a facility that provides medical, diagnostic, and treatment services that include physician, nursing, and other health services to inpatients and the specialized accommodation services required by inpatients" (see 68 FR 12500 at 12517, footnote 4 of table 2). We consider this interpretation to be sufficient for the final rule, but decline to codify this interpretation in the final rule. A codified interpretation of "hospital" would invite arguments as to whether a particular facility purchasing OTC drug products was or was not a "hospital," whether the majority of purchasing institutions were or were not "hospitals," and, as a result, would likely lead to further arguments about whether a particular OTC drug product sold to such facilities was subject to the bar code requirements. Engaging in such arguments would neither enhance patient safety, nor would it be an efficient use of our resources.

We also decline to interpret "commonly used in hospitals" as requiring two or more "indicators." If we were to make the change as suggested by the comment, fewer OTC drug products would be subject to the bar code rule despite their use in hospitals and despite their potential for causing medication errors. For example, if we interpreted the rule to apply only to those OTC drug manufacturers who directly sold their products to hospitals, then an OTC drug manufacturer could avoid the bar code requirement simply by selling the OTC drug products, complete with labeling for "hospital use," to wholesalers or middlemen for resale to hospitals. Similarly, if we were to adopt the comment's suggestion to change "packaged for institutional use" to "packaging designed for institutional use," a firm could avoid the bar code requirement by making no distinction between its packages for retail sale and its packages for hospital use, because the package is arguably not "designed" for institutional use.

(Comment 6) Two comments stated that the phrase, "dispensed pursuant to an order," is inappropriate because some institutions do not have orders provided by physicians or because some institutions allow nurses to request OTC drugs. Another comment suggested that we refer to OTC drugs that are "dispensed upon a prescription of a practitioner licensed by law to administer a drug;" the comment said this language would be clearer and eliminate any confusion as to what constitutes an "order."

Several comments suggested that we refer to "non-prescription drugs used therapeutically pursuant to a prescriber's order," although one comment used the phrase "pursuant to a rescuer's order." The comments explained that the word "therapeutically" would exclude OTC drugs such as toothpastes and mouth rinses. Another comment suggested that the rule state that OTC drug products "are excluded from the bar coding requirements except for those OTC therapeutic drugs that are packaged for institutional use or specifically marketed for use in an institution for therapeutic purposes."

(Response) The word "order," in § 201.25(b), is not confined to any particular manner, document, or format for requesting a drug, nor is it confined to any particular type of health care professional. The phrase "dispensed pursuant to an order" should be interpreted as applying to an OTC drug that is to be administered to a patient as directed by a health care professional, regardless of whether he or she is a physician, nurse, or other professional. Consequently, we decline to revise the rule to refer to a "prescription of a practitioner licensed by law to administer a drug" because those terms would be more restrictive and would create more, rather than less, uncertainty over the rule's applicability to OTC drug products. For example, the word, "prescription" could be interpreted as requiring the practitioner to write a prescription for the OTC drug product before it could be administered to the patient. In contrast, an "order" could be an instruction written on a patient's medical chart, and could even be entered into the chart at the same time when the OTC drug is administered. As another example, the phrase, "practitioner licensed by law to administer a drug" could create uncertainty or disagreement as to whether a person was a "practitioner," whether he or she was "licensed by

law," and whether that license included the ability to "administer a drug."

Similarly, we decline to revise the rule to refer to "non-prescription drugs used therapeutically pursuant to a prescriber's order." There is no apparent distinction between a "non-prescription drug" and "OTC drug product," and requiring such drugs to be used "therapeutically" could result in disagreements as to whether a particular use was "therapeutic." For example, a person might interpret "therapeutic" as meaning that the OTC drug product must have curative or healing properties and distinguish such drugs from those whose purpose is prophylactic or intended to prevent disease. Another person might distinguish between OTC drug products that provide symptomatic relief and "therapeutic" OTC drug products by arguing that providing symptomatic relief does not address the underlying cause of a disease or condition and, therefore, is not "therapeutic." We can avoid such potential arguments by not referring to "therapeutic" use.

We did not understand the comment that referred to a "rescuer's order" and did not believe the use of the word to be an appropriate substitute for an "order."

(Comment 7) One comment suggested that the rule cover OTC drug products that are intended to be dispensed intact and in the original container as provided by the manufacturer, for use by inpatients. The comment explained that this description would cover various OTC drug products and also cover OTC drug products that are "comfort medications" that nurses can request without a physician's order.

(Response) We decline to adopt the comment's suggestion. The comment's suggested definition would encompass some OTC drug products, such as mouth rinses and toothpastes, that are not likely to contribute to medication errors but are nevertheless dispensed intact and in the original container to inpatients.

(Comment 8) One comment asked us to exclude OTC drug samples from the rule. The comment noted that we had excluded prescription drug samples because prescription drug samples are usually dispensed in physicians' offices and because we did not believe that physicians or patients would be inclined to buy or use bar code scanners. The comment claimed that the same rationale applied to OTC drug samples.

(Response) We decline to amend the rule as suggested by the comment because an amendment is unnecessary. The rule requires bar codes only for OTC drugs that are "commonly used in hospitals" and "dispensed pursuant to an order." OTC drug samples would fall outside this bar code requirement because OTC drug samples are not "commonly used in hospitals" and are not "dispensed pursuant to an order."

(Comment 9) One comment from an OTC drug manufacturer asked if the rule applied to all packages of a specific OTC drug. The comment explained that the firm uses a "modified open stock catalogue" that includes all retail and some hospital-specific OTC drug products and that hospitals can buy products from the catalogue. The comment asked if the rule would require the firm to put bar codes on all OTC drug products in the catalogue or whether the firm could put a bar code on one or more OTC drug products and still offer OTC drug products without bar codes in the same catalogue. The comment appeared to suggest that hospitals could then decide which version (i.e., bar coded vs. nonbar coded) to buy, and the OTC drug manufacturer would still be in compliance with the rule.

(Response) We interpret the comment as meaning that an OTC drug manufacturer may make two versions of the same OTC drug product. Both versions would use the same drug (in the same dosage form and strength); they would differ only with respect to the presence of a bar code on the product labels. Under such a scenario, we agree that the OTC drug manufacturer could, indeed, offer both the bar coded and nonbar coded versions of the OTC drug product in the same catalogue for hospital and retail sales, and we would consider the firm to be in compliance with the rule.

However, if the OTC drug manufacturer had several different versions of an OTC drug product that is commonly used in hospitals and dispensed under an order, and the OTC drug manufacturer decided to put the bar code only on one product, we might consider the OTC drug manufacturer to be in violation of the rule. To illustrate, assume that the OTC drug manufacturer makes three different dosages of a drug: A 50 milligram (mg) tablet, a 100 mg tablet, and a 200 mg tablet, and it sells all three products to hospitals. If the OTC drug manufacturer placed the bar code on the 50 mg tablet labels, but not on the 100 mg and 200 mg tablet labels, we would not consider the OTC drug manufacturer to be in compliance with the rule. In this scenario, we would expect the OTC drug manufacturer to put bar codes on the 100 mg and 200 mg versions of its product as well.

(Comment 10) One comment asked us to clarify that the phrases relating to hospital use and to institutional use pertained only to OTC drug products.

(Response) The comment understands the rule correctly. The rule applies to all prescription drug products (except for prescription drug samples, allergenic extracts, intrauterine contraceptive devices regulated as drugs, medical gases, radiopharmaceuticals, low-density polyethylene form fill and seal containers, drug products shipped by manufacturers, repackers, relabelers, and private label distributors directly to patients, and blood and blood components). We explain the reasons for excluding these drugs later in this section.

Insofar as OTC drug products are concerned, the rule applies to those OTC drugs that are commonly used in hospitals and dispensed under an order.

(Comment 11) One comment stated that we should require bar codes on Betadine. The comment did not explain why it singled out this particular OTC drug, but stated that including drugs such as Betadine would allow computerized databases to check for potential allergic reactions.

(Response) Betadine is an iodine solution and an OTC drug product that is commonly used in hospitals, but only some versions are dispensed under an order. Thus, under the final rule, only those versions that are both commonly used in hospitals and dispensed under an order would be subject to the bar code requirement.

While Betadine has the potential to cause allergic reactions, it would be impractical to revise this rule to impose a bar code requirement based on a drug's potential for allergic reactions. For example, an individual might be allergic to a color additive used in a drug; another individual might be allergic to a different drug component. Accounting for all potential allergens would require additional data to be encoded, and it may be difficult to accommodate more data on product labels.

3. Must Vaccines Have a Bar Code?

In the preamble to the March 2003 proposal, we invited comment on the risks and benefits of including vaccines in the rule (see 68 FR 12500 at 12505 and 12529). We explained that we were sensitive to possible adverse impacts on vaccine production and availability.

(Comment 12) Most comments, including comments submitted by individual vaccine manufacturers and a pharmaceutical industry trade association, said vaccines should be subject to a bar code requirement. Some

comments also stated that we should require lot number and expiration date information to be encoded for vaccines, too, because such information is needed for accurate medical records.

In contrast, several comments suggested that we consider carefully the impact of bar coding on vaccines. Although these comments did not recommend exempting vaccines from the rule, neither did they appear to fully support bar codes on vaccines. For example, one comment said that bar codes on vaccines will have minimal impact because most vaccines are administered in physicians' offices, and bar code scanners will not be readily available at those offices. Several comments, submitted by health professional societies or organizations, urged "caution," stating that a bar code requirement could disrupt vaccine supplies and create a burden that exceeded the benefits of bar-coded vaccines. Another comment suggested that we create a separate regulatory process for vaccines and that we "engage" the vaccine industry to address data encoding issues.

(Response) Vaccines are subject to the final rule's bar code requirements by virtue of being prescription drugs. The comments did not show that the costs of bar coding vaccines exceeded the benefits, and we note that vaccine manufacturers themselves did not indicate that a bar code requirement would adversely affect vaccine production or supplies.

We decline, however, to require inclusion of lot number and expiration date information in a vaccine's bar code. As we stated in the preamble to the March 2003 proposal, the costs associated with encoding lot number and expiration date information appear to exceed the benefits (see 68 FR 12500 at 12507–12508). The comments did not provide evidence that would alter the cost-benefit analysis regarding lot number and expiration date information, so the final rule does not require such information in the bar code. Nevertheless, as we stated in the preamble to the March 2003 proposal, we will not object if firms voluntarily encode lot number and expiration date information (see 68 FR 12500 at 12508).

We also decline to establish a separate regulatory process for vaccines. We presented our concerns regarding bar codes and vaccines in a notice of a public meeting (see 67 FR 41360, June 18, 2002) and in the preamble to the March 2003 proposal (see 68 FR 12500 at 12504 and 12505). This rulemaking process, therefore, has given vaccine manufacturers and other interested parties ample notice and opportunity to participate on bar coding matters, so there is no public health need to create a separate regulatory process for vaccine bar codes.

4. What Other Types of Drugs Should Be Subject to a Bar Code Requirement?

a. Comments seeking to cover more drug products. (Comment 13) Many comments stated that we should require bar codes on all human drugs. Health care professionals and hospitals submitted most of these comments, but the comments frequently gave no rationale for covering all human drugs or argued that failure to require bar codes on all human drugs would force hospitals to repack drugs and apply bar codes themselves, thereby increasing the risk that hospitals might apply the wrong bar code.

(Response) We decline to require bar codes on all human drugs. By focusing on prescription drugs and certain OTC drug products, the rule covers those drugs that are most likely to be involved in medication errors. We also note that the rule should reduce the need for hospitals to put bar codes on drugs.

If we required bar codes on all human drugs, then some drugs (such as samples) would have bar codes even though they are used outside the hospital setting and in situations where the patient is unlikely to have access to, or be willing to buy, scanning or reading equipment to read the bar code. Other drugs, such as certain toothpastes, mouth rinses, and even homeopathic drugs (which are "drugs" under section 201(g) of the act (21 U.S.C. 321(g)) would also have to have bar codes even though they are not associated with medication errors. Thus, bar coding all human drugs is unnecessary and would not contribute significantly to an overall improvement in patient safety.

(Comment 14) Two comments asked us to require bar codes on investigational new drugs or asked if investigational new drugs are subject to the rule.

(Response) Investigational new drugs have not been assigned NDC numbers because the number of investigational new drugs is constantly changing, and that constant change would exhaust the number of available NDC numbers quickly.

In addition, bar codes on investigational new drugs also could result in misleading information or compromise the clinical study. For example, if the clinical trial involved placebo controls, and the placebo used the same bar code as the investigational new drug, the bar code could mislead the computerized database into believing that the patient received an active ingredient rather than a placebo. If the placebo used a different bar code compared to the investigational new drug, the different bar code would reveal the difference between the placebo and the investigational new drug and introduce bias into the clinical study. Consequently, we decline to require bar codes on investigational new drugs.

b. Comments seeking to exclude specific drug products. Although nearly all comments supported the rule, many comments sought to exempt or exclude particular products or classes of products from a bar code requirement or asked us to create a provision allowing case-by-case exemptions. In contrast, many comments, submitted mostly by hospitals and individuals, opposed any exemptions or opposed exemptions for specific products.

(Comment 15) Several comments asked us to exclude allergenic extracts from the rule. The comments argued that allergenic extracts encompass hundreds of different antigens, are sold directly to physicians, physician group practices, and clinics (or are not commonly used in hospitals) where bar code scanning equipment would not be used or where physicians and patients would have no incentive to buy bar code scanners, and that allergenic extracts do not always have NDC numbers. Another comment said that allergenic extracts are unique and tailored to each patient, so a manufacturer that had to comply with the bar code requirement would have to obtain NDC numbers for each extract, and this process would increase the likelihood of labeling errors. The comment also stated that a bar code requirement for allergenic extracts would be "unduly burdensome" and expensive; the comment estimated the cost of putting bar codes on allergenic extracts to be more than $120,000 for one firm alone.

(Response) We agree that allergenic extracts are used primarily in physicians' offices and that physicians and patients are not likely to buy or use bar code scanners. Consequently, we have excluded allergenic extracts from the final rule.

Because we have decided to exempt allergenic extracts, we do not find it necessary to address the comments' claims regarding burdens and costs.

(Comment 16) Some comments asked us to exempt products that are packaged together ("copackaged products"). One comment gave examples of products sold with titration packages or sold with different strengths or types in a package or carton that are used together. The comment explained that each

component could have its own NDC number, and asked what NDC number would be used for the copackaged product.

(Response) Even if two products are packaged together, and each product has its own NDC number, the copackaged product would have its own distinct NDC number. Thus, in the comment's example, the NDC number in the bar code would reflect the copackaged product and be distinct from the NDC numbers for the individual products, and so there is no reason to exclude copackaged products from the rule.

(Comment 17) Many comments asked us to exclude medical gases from the rule. The comments explained that compressed and liquid medical gases should be exempt from the rule because:

- Gas cylinders are located at a central supply point away from patients (so bar codes cannot be scanned easily);
- There is no easy way to affix a bar code at the quick-connect patient usage area that would discriminate between gas manufacturers;
- It is not technologically or financially feasible to have bar codes or to expect paramedics (who may be administering a medical gas) to use scanners;
- Cylinders and/or connectors are specific for gases;
- Cylinders are color-coded to reduce the potential for error;
- Gases, unlike other drugs, have dosages that vary per patient; and
- There are no known adverse events linked to medical gases.

Other comments asked us to exempt oxygen and medical gases for home use, stating that patients are unlikely to have bar code scanners in their homes, or that, for oxygen, the comment knew of no adverse reactions between oxygen and other drugs.

(Response) We agree that medical gases should be exempt from the bar code requirement. We do not, however, agree with all of the comments' arguments for exempting medical gases.

We are exempting medical gases from the bar code requirement because we conclude that bar codes on medical gases are not the best way to address medication errors associated with such drug products. We agree that, because medical gas cylinders are most frequently located at a central supply point away from patients, bar codes would not be scanned easily or in sufficiently close proximity to patients.

We also agree that there is no easy way to affix a bar code at the quick-connect patient usage area that would differentiate among gas manufacturers, and that the majority of medical gas cylinders are not patient-specific, but, rather, are used to administer medical gas to multiple patients. Because of these factors, which are unique to the administration of medical gases, we believe that bar codes are not the best way to address medication errors associated with medical gases.

We disagree with the arguments regarding the number of medical gas medication errors and the existence of adequate safeguards against such errors. The comments state that there have been very few medical gas medication errors. Low numbers of medication errors, alone, cannot justify an exemption. For example, if the type of medication error is serious (such as an error that results in death), then it would be difficult to justify an exemption on the grounds that a "low" number of deaths occur. Moreover, we have no basis to establish a threshold or baseline number of medication errors that would determine whether a particular drug had to comply with the bar code requirement. Even if we could establish such a threshold or baseline figure, that figure would be subject to challenge because health care professionals are not required to submit adverse event reports to us; in other words, the adverse event reporting system can signal the possible existence of a problem, but it cannot reliably predict the frequency with which such problems may occur.

We also disagree with the comments' claim that current provisions for the color-coding of high-pressure cylinders sufficiently protect against medication errors. At this time, color-coding of high-pressure cylinders is an industry recommendation rather than a requirement, so we cannot assume that all affected parties will choose to follow the recommendation. Additionally, injuries and deaths have resulted from administering medical gas from incorrectly colored high-pressure cylinders.

We also disagree with the comments' claim that medical gas containers have "unique connectors and valves" that decrease the potential for medication errors. Like color-coding, the use of unique connectors and valves is an industry recommendation and not a requirement. Our experience indicates that these connectors and valves can be and have been compromised such that incorrect gas has been administered, resulting in deaths and injuries.

Although we do not believe that bar codes are the best way to reduce medication errors in the administration of medical gases, we recognize the need for preventing such errors and have issued guidance on the matter, including a "Draft Guidance on the Current Good Manufacturing Practice for Medical Gases" (68 FR 24005, May 6, 2003), as well as a "Compressed Medical Gases Guideline" (February 1989). We intend to continue to evaluate medication errors associated with medical gases, and, as necessary, we may propose a regulation to reduce or prevent those errors.

(Comment 18) Two comments focused on contraceptives. One comment asked us to exempt oral contraceptives. The comment stated that it will be difficult to put bar codes on oral contraceptives because the tablets are contained in individual blister cells. The comment noted that oral contraceptives also have information regarding drug regimen compliance and placebos built into the package. The comment added that oral contraceptives are used outside the hospital setting.

The other comment asked us to exclude the Copper T intrauterine contraceptive and other intrauterine devices that are regulated as drugs. The comment asserted that these products are inserted into patients by physicians, are used outside hospital settings, and present no potential dosage error or administration error.

(Response) We decline to exclude oral contraceptives from the rule. Although oral contraceptives are contained in individual blister cells, those cells are usually placed in a single package with a single label, so the bar code would go on the label rather than on each individual blister cell. As for their use, we agree that oral contraceptives are used outside hospital settings, but do not believe that they are never used in hospitals.

As for the Copper T intrauterine contraceptive and other intrauterine products, we agree that such products, when used as specified, do not present medication error risks in the same manner as other prescription drug products, and we have excluded them from the rule. (These intrauterine contraceptive products are devices, but are regulated as drugs.) We also note that some hospitals may have additional procedures, such as requiring informed consent, before these intrauterine products are inserted, and those procedures may further reduce the risk of error.

(Comment 19) One comment asked us to exclude cosmetic-drug products which the comment characterized as not being subject to dosage limitations, such as anti-dandruff shampoo, deodorants, skin protectants, soaps, and sanitizers.

(Response) We decline to amend the rule as requested by the comment. Most products described by the comment would be OTC drug products and

probably would not be dispensed under an order. As a result, such products would not be subject to the bar code requirements. (It is also possible that some products, such as soaps, would be considered to be cosmetics rather than OTC drug products and would also be outside this rule.) We reiterate that only OTC drug products that are commonly used in hospitals and dispensed under an order are subject to the bar code requirements.

(Comment 20) Several comments sought an exemption for diluents. (A diluent is an agent, usually a liquid, that dilutes a substance (a drug, in this case) or makes it less potent or less irritating.) One comment claimed that diluents are not drugs, but acknowledged that some diluents do have NDC numbers. Another comment would not put bar codes on diluents that are packaged with another drug product because, the comment asserted, misidentification could occur after the diluent has been reconstituted with the other drug product. Another comment declared that bar codes on diluents should be voluntary and driven by the market rather than by regulation. Several other comments mentioned diluents or drug/diluent kits in a list of small products that, in the comments' view, warranted a waiver from the bar code requirement.

(Response) We decline to exclude diluents from the rule. Diluents are drugs under section 201(g)(1)(D) of the act if they are intended to be components of a drug. We are aware of medication errors involving diluents, so bar codes on diluents might help reduce or eliminate such errors. For example, bar codes on diluents could help prevent the following types of medication errors involving diluents:

- Use of the incorrect or improper diluent. Certain drug products are compatible with specific diluents, so using the incorrect diluent can compromise patient safety, especially if the incorrect diluent causes a precipitate to form that is not recognized when the drug is administered. Some precipitates are not recognizable by the human eye. An incorrect diluent can also be a problem if the patient has a particular medical condition (e.g., a diabetic patient receiving a diluent consisting of dextrose in water rather than normal saline). A bar code could alert a health care professional to the presence of an incorrect or improper diluent.
- Use of the incorrect amount of diluent. This can cause an incorrect final concentration of a drug, resulting in either an overdose or underdose of the prescribed drug. A bar code could verify that a diluent's amount was correct. .
- Use of a diluent alone. We have reports where diluents were administered without the active ingredient. This error appears more likely to occur when the diluent and drug are removed from their package. In one case where a patient was supposed to receive an antibiotic oral suspension which was supplied as a lyophilized powder in a small bottle and milky white diluent in a larger bottle, the patient received the diluent only and not the antibiotic itself. A bar code could alert a health care professional that he or she is administering a diluent only.
- Incorrectly packaged or labeled diluents. There have been cases where a package was supposed to contain a diluent and active drug ingredient, but the product was incorrectly packaged so that it contained two vials of diluent. A bar code could alert a health care professional that the package contains only diluents.

If, as one comment indicated, a diluent does not have an NDC number, an NDC number should be obtained for that product. If a diluent is packaged with another drug, then, as we stated in our response to comment 16 of this document, the diluent, the drug, and the copackaged product would each have its own distinct bar code. Thus, if the diluent were separated from the drug in a copackaged product, the diluent would still have its own distinct bar code, and that bar code could be scanned.

(Comment 21) One comment asked that we exclude drug products that are shipped directly to patients. The comment gave an example of peritoneal dialysis solutions and said that an exclusion would be appropriate because patients would not be inclined to buy and use bar code scanners within their homes. The comment also claimed that the product it shipped is not typically used in hospitals.

(Response) We agree, in part, with the comment. If a prescription drug product is shipped directly from a manufacturer, repacker, relabeler, or private label distributor to a patient, then we will not require that product to be bar coded. We agree that patients will not have or be inclined to buy scanners for use within their homes.

However, similiar to our response to comment 9 in section II.B.2 of this document, if the same prescription drug product is marketed to hospitals, then we will expect that drug to have a bar code. In other words, to use the comment's example of a peritoneal dialysis solution, a manufacturer could produce two different versions of the same product; the version sold directly to patients would not have to have a bar code, but the version that is intended for sale to hospitals will be subject to the bar code requirement. By requiring the latter version to be bar coded, we will help prevent or reduce medication errors in the hospital.

(Comment 22) Several comments asked us to exclude nebules from the rule. (A nebule is a vial or container that holds a drug, usually in liquid form, before the drug is administered or dispensed in a device called a nebulizer.) The comments explained that we have been reluctant to approve nebules with a label due to concerns that labeling components could leach into the nebule and contaminate the drug. One comment added that, even if we were to approve a label on a nebule, it was unclear how a manufacturer could print the bar code.

Another comment asked whether the rule should apply to pharmaceuticals packaged with low-density polyethylene (LDPE) form fill and seal containers. The comment explained that placing a bar code on such products would present a drug stability issue. The comment said that if the rule applied to these products, then drug manufacturers would need additional time to comply with the rule because they would need to conduct stability tests.

(Response) The comments are correct that printing a bar code on such products could introduce volatile impurities into the drug (because the ink from the bar code could leach into the drug). We have provided guidance on LDPE container closure systems in "Guidance for Industry on Inhalation Drug Products Packaged in Semipermeable Container Closure Systems" (July 2002).

However, we also know that some products may be packaged with a foil overwrap. Consequently, we are granting a limited exemption. We will not require a bar code on LDPE form fill and seal containers that are not packaged with an overwrap, due to the potential leaching and contamination problem. (We do not need to mention nebules in this limited exemption because nebules are LDPE form fill and seal containers.) If the product is packaged with an overwrap, then we will expect the bar code to be displayed on the overwrap. A bar code on the foil overwrap (the secondary protective packaging) for individual or multiple LDPE units will not be in direct contact with the drug product, and the foil overwrap will prevent the ink and other impurities from contaminating the drug.

(Comment 23) One comment asked us to exclude prescription dental drugs from the rule. The comment claimed that prescription dental drugs are not used in hospitals and are applied by dentists in their offices or prescribed for home use, so bar codes would not be helpful.

(Response) We decline to exclude prescription dental drugs from the rule. We believe that prescription dental drugs are used in hospitals, so bar codes on prescription dental drugs would help prevent medication errors.

(Comment 24) One comment said we should exempt radionuclear drugs from the rule. The comment explained that the outside containers of radiopharmaceuticals are lead "pigs" that encase syringes and vials and are used to ship radioactive materials. The lead pigs are recycled, so any bar codes on the pigs would have to be removable. However, the comment claimed, a removable bar code on the lead pigs would require new labeling or shrink wrapping equipment, thus leading to a significant financial burden on nuclear pharmacies. The comment added that radiopharmaceuticals have a low "misadministration" rate of 30–40 reportable "events" annually compared against more than 14 million nuclear medicine procedures in 2002. The comment also claimed that a bar code would require nuclear pharmacies to amend their Nuclear Regulatory Commission (NRC) Agreement State licenses because the licensing authority would have to approve all labeling changes.

(Response) We agree that radiopharmaceuticals prepared at nuclear pharmacies should be exempt from the bar code requirement. The comment correctly stated that radiopharmaceuticals have a low misadministration rate. According to NRC data, the number of reportable medical misadministrations of radiopharmaceuticals has been in the range of 32 to 42 out of more than 14 million administrations per year for the last 5 years. The highest number of reportable misadministrations occurred in 1998, when there were 42 reportable events; this represented the highest total since the NRC began collecting data under the Government Performance and Results Act of 1992.

Low medication error rates are not, however, sufficient to warrant an exemption from the bar code requirement. Instead, our principal reason for exempting radiopharmaceuticals is that NRC regulations pertaining to the medical use of radiation byproducts render bar codes unnecessary for patient safety. For example, NRC regulations require, in many cases, that radiopharmaceuticals be administered under a written directive that ensures verification of a patient's identity before each administration (see 10 CFR 35.40(a) through (b), and 35.41(a) through (b)). We believe that NRC regulations pertaining to the use of radiation byproducts provide sufficient safeguards in preventing medication errors involving radiopharmaceuticals, and, because of this alternative regulatory program for these products, the benefits associated with a bar code would not justify the costs.

Because we have decided to exempt radiopharmaceuticals from the bar code requirement, we do not need to address the comment's other claims regarding labeling, packaging, and financial burdens.

(Comment 25) One comment, submitted by an OTC drug manufacturer, asked us to exempt its OTC drug products due to their "distinctive form" and "clear labeling." The comment said that medication errors for its products (such as ready-to-use enemas, suppositories, and medicated topical creams) are "exceedingly rare."

(Response) We decline to exclude OTC drug products that purport to have a "distinctive form" and "clear labeling." A product's "distinctive form" and labeling do not preclude the possibility of drug interactions, wrong drug, wrong dose, wrong route of administration, or other types of medication errors.

We also decline to exclude OTC drug products, or even prescription drug products, from the rule even if their potential for medication errors is "exceedingly rare" (as the comment claimed). We have no basis to establish a threshold or baseline medication error rate that would determine whether a product should have a bar code, and even a "low" medication error rate could result in death or harm to patients. Furthermore, if we linked the bar code to a drug's medication error rate, the result could be that a drug might be bar coded at one time if its medication error rate exceeded the threshold, but not bar coded once the medication error rate fell below that threshold, and this could create confusion. For example, assume that the rule based the bar code requirement on a medication error rate of 5 percent. If Drug X had a medication error rate of 5.2 percent in Year A, it would be bar coded. If Drug X had a medication error rate of 4.9 percent in Year B, then it would not be bar coded. However, in all likelihood, in Year B, both bar coded and nonbar coded versions of Drug X would exist in the marketplace. If Drug X's medication error rate was 5.1 percent in Year C, the drug would, again, be subject to the bar code requirement. In such circumstances, the bar code would lose its value and reliability, insofar as medication errors are concerned, because hospitals would confront a constantly changing environment of drugs that have or lack bar codes, and hospitals would either not rely on such codes or lose confidence in the bar code system.

(Comment 26) One comment asked whether pharmacy-compounded prescription drugs would be subject to the bar code requirement.

(Response) As we noted in the response to comment 1 of this document, under section 510(g) of the act, pharmacies:

> which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of such practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail

do not have to register their establishments or list their products with FDA. Thus, a pharmacy that compounds drugs in accordance with this provision would probably fall outside § 201.25(a) and compounded drugs made by that pharmacy would not have to bear a bar code.

We also note that pharmacy-compounded drugs do not have NDC numbers.

(Comment 27) Several comments focused on drugs in small vials or containers. Comments from several drug manufacturers and a trade association suggested that we exempt small vials and/or small containers from the rule, and several of these comments mentioned 5 milliliter (mL) vials, suppositories, small ophthalmic containers, prefilled syringes, and blister packs as examples of products that need an exemption. The comments stated that some vials or containers would be too small for a bar code. One comment suggested exempting vaccine unit-of-use containers if a manufacturer demonstrated an inability to apply a bar code due to space limitations.

In contrast, several comments strongly opposed exemptions for small vials and ampules. These comments explained that many of these products are high-

risk medications or that most injectable products come in small vials or ampules. Other comments said that liquid medications are more often linked to medication errors than solid dosage forms, so creating an exemption for vials and ampules would undermine the rule's effectiveness. Other comments opposed exemptions for small vials because the absence of a bar code would force hospitals to apply bar codes to the products themselves, and this would create the potential for labeling errors by the hospital.

One comment, submitted by the UCC, stated that, "No [UCC] pharmaceutical member has presented the UCC with a healthcare product too small for a [Reduced Space Symbology] symbol." However, the UCC could not preclude the possibility that some small product could not be bar coded, although it did note that one firm had put bar codes on vials as small as 1 mL. The UCC comment also contained attachments describing how several pharmaceutical manufacturers (Abbott Laboratories, Baxter Healthcare Corp., Pfizer, Inc., and Aventis Behring) had decided to put bar codes on injectable pharmaceuticals, intravenous solutions, and other drug products.

(Response) We decline to exempt small vials or containers (including suppositories, prefilled syringes, and other small products for which comments sought exemptions). We agree that the risk of medication errors for these products cannot be ignored, and we also find the UCC's comments persuasive. If several pharmaceutical companies have already shown their ability to place a bar code on a 1 mL vial, we cannot justify a blanket exemption for comparatively larger products, such as 5 mL vials, and prefilled syringes.

Furthermore, we note that § 201.25(c) requires the bar code to appear on the drug's label. For some products described by the comments, the drug's label appears on an overwrap or packaging. Alternatively, it may be possible to modify the drug's immediate container to accommodate a label bearing a bar code.

c. Comments seeking a general exemption provision. (Comment 28) In the preamble to the March 2003 proposal, we explained our reasons for not including a general exemption provision (see 68 FR 12500 at 12511 through 12512). We noted that industry-conducted pilot studies had placed reduced space symbology (RSS) bar codes on small vials and that those studies suggested that almost all products are capable of bearing a bar code. We also pointed out practical problems with an exemption provision, such as potential arguments as to whether it was "feasible" to affix a bar code and the resources that would be needed to deal with exemption requests (id.). Nevertheless, the preamble to the March 2003 proposal invited comment on whether we needed to create a waiver provision and how we could create a provision that would minimize the potential for misuse (see 68 FR 12500 at 12529 (question 8)).

Most comments opposed a general exemption or waiver provision. The comments said we would find ourselves expending resources to deal with exemption requests and that exemptions would cause more harm than good. Some comments opposed creating an exemption mechanism because they would prefer to have manufacturers repack their products or develop packaging that would support a bar code. Other comments noted that, if we exempt various products from the rule, hospitals will be forced to bar code those products themselves, and this could result in labeling errors and require hospitals to rely on two different data systems (one for bar codes with NDC numbers and another for drugs that the hospital has bar coded itself).

A few comments suggested that we create an exemption provision that would consider requests on a case-by-case basis or would be "limited." The comments did not suggest how we might prevent misuse of an exemption provision. Another comment asked that we define an exemption review process.

(Response) Given the number of comments we received requesting an exemption for a specific product or class of products, the fact that the final rule contains certain categorical exemptions requested by some comments, and our inability to predict every future product or class of products for which an exemption might be justified, we felt it would be prudent to add a general exemption provision to the rule. Consequently, we have added a new § 201.25(d) which states that we may, on our own initiative or in response to a written request from a manufacturer, repacker, relabeler, or private label distributor, exempt a drug from the bar code requirement. The exemption request, under § 201.25(d)(1)(i), must document why compliance with the bar code requirement would adversely affect the drug's safety, effectiveness, purity, or potency or not be technologically feasible. The request must also explain why the problem cannot be reasonably remedied by measures such as package redesign or use of overwraps. Alternatively, under § 201.25(d)(1)(ii), the request must document why an alternative regulatory program or method of product use renders the bar code unnecessary for patient safety. For example, as explained earlier in our response to comment 24 of this document, we exempted radiopharmaceuticals from the bar code requirement because existing NRC regulations on the medical use of radiation byproducts render the bar code unnecessary for patient safety.

Section 201.25(d)(2) provides the address to which exemption requests should be sent. For human drug products, the request should be sent to the Office of New Drugs (HFD–020), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. For biological products, the request should be sent to the Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852.

We reiterate that we have created this general exemption provision to allow us to efficiently and justly address products or classes of products that we have not already considered. We emphasize that almost all drug products are capable of bearing, and should in fact bear, a bar code. We will not consider written requests that are based on other reasons (such as financial reasons, a claimed low rate of medication errors, or a claim that the product is somehow unique such that medication errors do not occur or rarely occur). Similarly, we will not entertain written requests seeking an exemption for a particular drug, class of drugs, or group of products when we have already refused to grant an exemption for the same drug, class of drugs, or group of products in this final rule. The general exemption provision is intended to be used in rare cases.

If we refuse to grant an exemption in response to a written request, our decision can be reviewed under our existing regulation at 21 CFR 10.75, "Internal agency review of decisions."

5. Should Medical Devices Be Excluded From the Rule?

The preamble to the March 2003 proposal explained that we did not intend to issue any bar code requirement for medical devices at this time (see 68 FR 12500 at 12506). The preamble to the March 2003 proposal stated that devices present different issues compared to human drug and biological products and that we would continue to study whether to develop a proposed rule to require bar codes on

medical devices to prevent or reduce medication errors (id.).

(Comment 29) Two comments said we should reject the device industry's request for further study and require bar codes on devices. The comments said that implantable devices are made to detailed specifications and sometimes fail, so one could presume that a device manufacturer would recall defective devices. The comments added that bar codes on devices would help create patient records that could be easily searched so that hospitals could determine an appropriate course of action if a patient received an implantable device that was recalled.

Other comments argued that we should examine the benefits of bar code labeling on devices or that bar codes would be helpful on certain devices. For example, one comment said that patient safety would be further enhanced by applying bar codes to devices such as blood bags, filters, and apheresis kits.

Conversely, one comment agreed with our decision to omit devices from the rule. The comment said that devices present "unique" issues, such as product diversity, evolving coding technology, and unique product identification needs that are often negotiated between customers and device manufacturers. The comment recommended that we allow for voluntary use of Universal Product Numbers (UPNs) on devices in either the European Article Number/Uniform Code Council (EAN/UCC) or Health Industry Business Communications Council (HIBCC) standard. The comment explained that the UPN system is established and provides greater consistency with global identification trends compared to the NDC number.

(Response) We decline to include devices in the final rule. Unlike drugs, medical devices do not have a standardized, unique identifying system comparable to the NDC number. (There is a National Health Related Items Code (NHRIC) system for identifying and numbering marketed medical device packages, but participation in the NHRIC system is voluntary, and the database may contain out-of-date information due to industry acquisitions and mergers.) The absence of a standard, numerical identification system comparable to the NDC number is one of several issues that complicate efforts to put bar codes on medical devices for purposes of preventing or reducing medication errors.

We also note that permanently implantable devices are subject to our device tracking requirements at part 821 (21 CFR part 821), and those requirements can be quite detailed. For example, under § 821.25(a)(2)(iii), a device manufacturer must have a method of tracking each device that it distributes that enables the manufacturer to give FDA, within 10 working days of a request from FDA, information regarding the name, address, telephone number, and social security number (if available) of the patient receiving the device.

As for voluntary use of UPNs on medical devices and the use of EAN.UCC or HIBCC standards, we recognize that some devices already bear a bar code for reasons relating to purchasing or inventory control, and we have not objected to their use nor to the bar code standards used.

C. What Must the Bar Code Contain? (§ 201.25(c)(1))

1. Should We Require the Bar Code to Contain the NDC Number?

Proposed § 201.25(c)(1) would require the bar code to contain, at a minimum, the drug's NDC number. The NDC number identifies each drug product that is listed under section 510 of the act or section 351 of the PHS Act.

(Comment 30) Two comments claimed that their products, allergenic extracts, do not have NDC numbers. The comments stated, as part of a request to have allergenic extracts excluded from the rule, that FDA has allowed generic groupings for allergens under one NDC number. The comments added that they market nearly 200 to 300 allergens in four different package configurations each, so, if allergenic extracts had to carry bar codes, the firms would need from 800 to 1,200 new NDC numbers respectively, and this would have "enormous" implications for the firms and FDA.

(Response) As we stated in our response to comment 15 in section II.B.4.b of this document, we have excluded allergenic extracts from the rule. As a result, issues regarding NDC numbers for allergenic extracts are moot.

(Comment 31) Several comments focused on the NDC number itself. One comment said that the NDC number contains the necessary information for bar code purposes. However, several comments argued that OTC drug products should be allowed to use the Universal Product Code (UPC) number either instead of or in addition to the NDC number. Some comments said that OTC drug manufacturers would incur thousands of dollars of "unnecessary extra 'new item' costs" because different NDC numbers would be necessary for new, minor formulation changes to their drugs and create logistical complications for retailers (because retailers use the UPC codes). Two comments said that requiring OTC drug bar codes to contain the NDC number would increase the demand on NDC numbers, increase FDA's workload, or exhaust the number of available NDC numbers. One comment said it should be feasible for a database to handle both NDC and UPC numbers, whereas another comment said that allowing OTC drug products to continue using UPC numbers would make more NDC numbers available for other drug products and thus benefit the NDC number system.

Another comment supported the use of the NDC number with four extra digits. The comment said this 15-digit number, called "NDC Plus Four," would identify individual doses and vital information about the drug, including, among other things, the drug's lot number, expiration date, and recall status.

Another comment asked us to change the NDC number so that it contained a drug's expiration date.

(Response) We decline to amend the rule as suggested by the comments. The UPC code does not necessarily identify a unique drug product. For example, if an OTC drug manufacturer made and sold a particular drug product, that drug product would have a UPC code, and it would also have a unique NDC number. If the OTC drug manufacturer reformulated the product (such as changing an ingredient), the manufacturer could use the same UPC code for the reformulated product, but the reformulated drug would have a different, unique NDC number. This could be significant to a patient's health if, for example, the reformulated product contained an ingredient that caused allergic reactions or drug interactions. Thus, requiring the use of NDC numbers, rather than UPC numbers, will help ensure that the drug is identified correctly.

Additionally, as we stated in the preamble to the March 2003 proposal (see 68 FR 12500 at 12507), we intend, through a separate rulemaking, to change the NDC number so that it becomes a unique identifying number for listed drugs. If we were to allow the use of other coding systems, such as UPC numbers that did not contain the drug's NDC number or an NDC number with additional digits, persons who wanted to decipher a drug's bar code would need to consult multiple information sources, and this would increase the likelihood that some information and databases might not be updated as frequently as others, that

some information might be unavailable, or that the information would be presented in different or incompatible ways. Although we understand the OTC drug industry's reservations about changing UPC codes to include NDC numbers because of a possible cost impact, § 201.25(b) only requires bar codes on OTC drug products that are dispensed under an order and are commonly used in hospitals. Furthermore, as we stated in our response to comment 9 of this document, we will allow OTC drug manufacturers to create bar coded and nonbar coded versions of the same OTC drug product; the bar coded versions, which would be intended for hospital sale and use, would carry the NDC number in the bar code. The versions intended for retail sale could continue to use the UPC code.

We also decline to revise the NDC number to include expiration dates or to add more digits to the NDC number. Revising the NDC number is outside the scope of this rule. Furthermore, expiration dates vary with each new batch or production run, so if we were to revise the NDC number to include expiration dates, we would quickly exhaust the number of available NDC numbers and be forced either to redefine the NDC number or develop an alternative system relatively quickly, and other databases that relied on the NDC number would also be forced to adapt or develop new systems themselves. Restructuring the NDC number in this manner would, therefore, be impractical and costly.

Similarly, adding more digits to the NDC number might be disruptive for those databases that already use or rely upon the NDC number. Those databases would either have to reconfigure themselves to handle 14-digit numbers (assuming all preexisting NDC numbers were modified to contain 14 digits) or reconfigure themselves to handle 10- and 14-digit NDC numbers (assuming that preexisting NDC numbers remained the same, but new drugs would receive a 14-digit number). Such reconfigurations could be expensive for those who maintain the databases and those who use them. A 14-digit number could also be either redundant or confusing in comparison to the Global Trade Item Number (GTIN). As the preamble to the March 2003 proposal mentioned, the GTIN is a 14-digit number which, when used in a bar code on drug products, contains the NDC number in conjunction with a code that identifies the product's packing level (see 68 FR 12500 at 12506).

(Comment 32) Two comments asked us to ensure that different parties use different NDC numbers. One comment said that the proposed rule failed to explain how repackers will distinguish a repacked product from the original manufacturer's package. The comment suggested that manufacturers use certain digits to signal the presence of an original manufacturer's package and that repackers use other digits to identify repackaged products. The comment said we should require repackers to have a manufacturer's identification number.

The other comment asked that we ensure that hospitals do not use the manufacturer's NDC codes when repacking a drug.

(Response) As we stated in our response to comment 2 of this document, if a repacker, relabeler, or private label distributor is subject to the establishment registration requirement at section 510 of the act, then that person is also subject to the bar code requirements and must use its own NDC numbers on its products. In other words, a manufacturer, repacker, relabeler, or private label distributor cannot and should not use an NDC number that is not assigned to it. Use of another establishment's NDC number in the bar code would cause the product to be misbranded under section 502(a) of the act because the drug's label would be misleading.

Hospitals, though, are exempt from the establishment registration requirements. Consequently, hospitals themselves are not subject to the bar code requirement, and we consider drug repacking and dispensing operations inside hospitals to be within the practice of pharmacy.

(Comment 33) Several comments addressed possible changes to the NDC number. The preamble to the proposed rule stated that we intended to redefine the NDC number through a proposed rule on drug establishment registration and listing (see 68 FR 12500 at 12506). Most comments opposed any redefinition of the NDC number. One comment said that redefining the NDC number would create confusion, possibly harm patients (although the comment did not explain how such harm would occur), and undermine the bar code rule. Other comments said that redefining the NDC number would be costly and disruptive to various databases that rely on or use NDC numbers. One comment said that we should not make a final bar code rule effective until the drug industry has had the opportunity to understand and comment on any changes to the NDC number. A different comment said we should consult various "stakeholders" before we make changes to the NDC number. Another comment said that we did not need to redefine the NDC number because the GTIN would provide "sufficient direction."

(Response) As we stated in the preamble to the March 2003 proposal, we intend to revise our drug establishment registration and listing regulations to make the NDC number unique and more useful to informational databases, whether those databases are created to prevent medication errors, to obtain the latest information about a drug, or to track drug use and distribution. We are still preparing the proposed rule, and when we publish it in the **Federal Register**, we will invite comment on our proposed NDC number changes. Until we revise our drug establishment registration and listing regulations, the current requirements at § 207.35 continue to apply to the NDC number.

We also must point out that, even under a proposed drug establishment registration and listing rule, assuming there is no change in the product or packaging, we do not intend to replace currently-used NDC numbers. For existing NDC numbers, we would consider issuing a new number to an existing drug product only if there were two drugs that had the same NDC number.

(Comment 34) One comment criticized the NDC number, stating that it cannot tell whether the right dose is being administered because the actual dose may be a partial dose or multiple doses of the drug identified by the bar code. The comment said this reflected a technological limitation with NDC numbers, so the comment suggested that the computer systems used to document drug administration alert users and require manual intervention by health care professionals to verify doses.

(Response) The comment is correct that the NDC number may have certain limitations when different dosages are administered from a single package or when partial dosages are administered. For example, assume that a drug's package contains 20 tablets. The drug's NDC number will reflect the fact that the package contains 20 tablets. If the drug administered to the patient consists only of one tablet, then scanning the NDC number for the package alone will not show the correct dose given to the patient. The NDC number's principal value, in this scenario, is verifying that the correct drug in the correct dosage form is being administered. As another example, some drug product labels do not state pediatric dosages, so a physician might prescribe a partial dose for a pediatric patient. In this scenario, the NDC

number's principal value is verifying that the correct drug, in the correct dosage form, is being administered.

Regarding the comment's suggestions concerning computer systems, we agree that it could be helpful if a computerized database alerted health care professionals to check dosages given to patients. However, we do not intend to create, maintain, or regulate the databases that scanning equipment would consult to decode NDC numbers, so we advise parties to consider this issue when they develop computer systems associated with scanners to decode the NDC numbers.

2. Should the Bar Code Contain Lot Number and Expiration Date Information?

The March 2003 proposal would not require the bar code to contain the drug's lot number or expiration date. In the preamble to the March 2003 proposal, we explained that we were unable to show that the benefits associated with encoding lot number and expiration date information exceeded the costs, so we proposed to omit lot number and expiration date information from the bar code (see 68 FR 12500 at 12507). However, we also said that we would not object if drug manufacturers, repackers, relabelers, and private label distributors decided to encode lot number and expiration date information voluntarily (id. at 12508). We stated that industry representatives had suggested that they might add such information if a demand existed for it (id.), but we did not know whether hospitals and other health care facilities would be willing to pay more for drugs that had lot number and expiration date information encoded in the bar code. We invited comment on the costs and benefits associated with putting lot number and expiration date information in the bar code.

(Comment 35) Many comments urged us to require lot number and expiration date information in the bar code, but did not provide evidence to support their views. Instead, most comments declared that lot number and expiration date information would make it easier to identify recalled, contaminated, and expired drugs, would improve entries into medical records, or would provide greater patient safety. Other comments said we should phase-in a requirement to encode lot number and expiration date information over an extended time period, but did not discuss why a phased-in approach would alter the cost-benefit problem that we identified in the preamble to the proposed rule. Some comments would extend the rule's effective date to give firms more time to encode such information. Another comment urged firms to encode lot number and expiration date information, but only if the costs were not passed on to hospitals.

Other comments advanced different arguments for requiring lot number and expiration date information as part of a bar code. For example, one comment stated that the American Society of Hospital Pharmacists and others want lot number and expiration date information encoded, and so we should defer to them. Several comments said manufacturers should encode such information because they could do so at less cost compared to hospitals.

Several comments advocating the inclusion of lot number and expiration date information in a bar code argued that technology could encode such information. For example, one comment claimed that the information can be easily encoded using two-dimensional symbologies and noted that some manufacturers plan to encode such information voluntarily. Another comment noted that the GTIN, rather than the NDC number alone, could be used to provide additional patient safety information. Another comment declared that encoding lot number and expiration date information could be inexpensive because, the comment noted, firms already print the same information, in human-readable form, on packages.

In contrast, other comments supported our decision to omit lot number and expiration date information from the rule. Several comments conceded that the information could help trace recalled drugs and help with product inventory, but said that the information would not significantly reduce medication errors and that the costs of encoding the information would exceed the benefits. For example, one comment estimated that encoding lot number and expiration date information would cost $7,500 to $20,000 per manufacturer's line, excluding costs to verify the information. Several comments expressed concerns about the impact on production line speed. For example, one comment said that the online printing equipment that would be needed for encoding lot number and expiration date information is "highly ineffective and unreliable" at production speeds above 120 units per minute and that alternatives, such as preprinting labels, would present serious good manufacturing practice (GMP) concerns in verifying that the right label with the correct lot number and expiration date is used on the correct product. Another comment said that online printing and verification technology has not been demonstrated at production line speeds of 250 to 300 units per minute. A different comment listed various problems associated with online printing of lot number and expiration date information, such as adverse impacts on line speed and print quality, the need to develop unique bar codes for each packaging run, and limiting packaging options until printing and packaging technology becomes capable of supporting online product speeds and adequate print quality.

Another comment said we were correct to omit lot number and expiration date information from the rule because it would make bar coding more complex and perhaps discourage manufacturers from making unit-dose packages. The comment, along with other comments opposed to requiring lot numbers and expiration dates in a bar code, shared our view that the market would determine whether manufacturers and others encode lot number and expiration date information voluntarily.

One comment suggested that, if we decide to require lot number and expiration date information to be encoded, the information should only go on shipping cartons and not on individual packages because this would reduce the manufacturer's costs.

The comments also disagreed on how to interpret our recall data. The preamble to the proposed rule stated that we had examined the number of recalled drugs from fiscal year 1997 through fiscal year 2002 and that, while there were 1,230 recalls during that time period, there were few reports of adverse experiences associated with the administration of a recalled drug (see 68 FR 12500 at 12507). One comment said this data supported inclusion of lot number and expiration date information in the bar code because Class I recalls represent a reasonable probability that the use or exposure to the drug will cause serious adverse health consequences or death, and 97 of the 1,230 recalls were Class I recalls. In contrast, a comment that opposed inclusion of lot number and expiration date information in the bar code said the data were not sufficient to show any public health problem resulting from the administration of recalled or expired drugs.

(Response) The final rule does not require lot number or expiration date information to be included in the bar code. As we stated in the preamble to the March 2003 proposal, the data available to us do not indicate the magnitude of the public health problem associated with administering expired or recalled drugs, and we cannot

quantify the patient safety benefit associated with requiring lot number and expiration date information in the bar code (see 68 FR 12500 at 12507). The potential burden of encoding lot number and expiration date information appears to outweigh the potential benefit of encoding such information.

We emphasize that we do not dispute whether encoded lot number and expiration date information would be helpful in certain contexts that are unrelated to medication errors. We also do not dispute that the technology exists to encode such information or that certain firms have expressed their intent to encode such information. Nevertheless, while we recognize the strong desires expressed by some regarding lot number and expiration date information, we must also recognize the potential impact on manufacturers, repackers, relabelers, and private label distributors if we required them to encode lot number and expiration date information. The evidence before us indicates that the costs associated with encoding lot number and expiration date information, insofar as medication errors are concerned, exceed the benefits, so we decline to require such information as part of the bar code.

We reiterate that we will not prevent or prohibit firms from encoding lot number and expiration date information if they wish to do so; and we note that some drug manufacturers are encoding or intend to encode such information. We also remind hospitals and other potential bar code users that lot number and expiration date information may be encoded in two-dimensional or other technologies, so if they intend to purchase drug products with lot number and expiration date information encoded, they should consider carefully their scanning or reading equipment purchases (see 68 FR 12500 at 12507).

(Comment 36) Several comments would require other information to be encoded. For example, one comment said we should require the bar code to contain information regarding the drug's concentration, amount, and route of administration. The comment explained that information on the drug's concentration and amount could prevent errors involving concentration or overdose. It explained that information regarding the drug's route of administration could be helpful because, the comment claimed, some drugs are not to be administered intravenously or as major nerve anesthetics. Another comment focused on clotting factor products and wanted the bar code for these products to contain (among other things) the drug's brand name and number of units in a vial. The comment recognized that encoding the number of units in a vial might be difficult, but said that persons with hemophilia and other bleeding disorders often carry vials, but not package boxes that contained the vials, with them. It added that the additional information would provide better information about the product's efficacy, i.e., whether the patient achieved the expected hemostatic response given the units administered.

Several comments asked that we require the bar code to indicate the drug's waste disposal status under the Resource Conservation and Recovery Act (RCRA). The comments explained that medical personnel might not know that a particular drug, when it becomes a waste product, is regulated under RCRA. Some comments suggested that the drug's waste disposal status could be identified by adding another digit to the NDC number. One comment suggested that we coordinate with the Environmental Protection Agency to capture a drug's hazardous waste disposal status.

(Response) We decline to revise the rule as suggested by the comments. The NDC number, under a bar code system, is a link to information held in a database. For example, assume that the bar code contains the drug's NDC number. The scanner reading the bar code would transmit the NDC number to a computerized database, and that database could be designed to generate information regarding the drug's names, dose, concentration, route of administration, waste disposal status, etc. In other words, the information sought by the comments could be built into a database and does not have to be encoded in the bar code itself and does not require changes to the NDC number.

3. Can Information Be Omitted From the Label to Accommodate the Bar Code?

(Comment 37) Several comments suggested that we allow firms to exclude certain information from their labels so that they could affix a bar code. Some comments sought relief from the labeling requirements at § 201.10(i) (21 CFR 201.10(i)); that provision requires drug labels to contain the drug's proprietary name, established name (if one exists), an identifying lot or control number, and the manufacturer's, packer's, labeler's, or distributor's name. One comment suggested amending § 201.25(c), regarding the bar code's placement on a label, to state that any drug complying with the bar code requirement is exempt from § 201.10(i)(1)(iii) and (i)(1)(iv) (provisions regarding the identifying lot number or control number and manufacturer's, packer's, labeler's, or distributor's name) if the packaging size is such that the required information is not easily readable.

One comment sought clarification regarding a label requirement imposed by another Federal agency. The comment claimed that the Consumer Product Safety Commission (CPSC) has a regulation that requires drug products labeled for hospital use only to also bear a statement regarding use in households without young children.

Several comments focused on small labels. One comment stated that excluding "some" label information would help print high quality bar codes; the comment identified the manufacturer's or distributor's name and address as information that it would exclude from a label. Similarly, another comment would remove the manufacturer's name from the label because, the comment explained, the manufacturer's name is on the outer package and is part of the NDC number. Another comment stated that the only way to create room for a bar code on a small label would be to reduce font size, but the resulting print would be difficult to read.

(Response) We decline to amend the rule as suggested by the comments. In most cases, the information that the comments would remove from the label is required by Federal law, so we are unable to provide the relief sought by the comments. For example, section 502(b)(1) of the act considers a drug to be misbranded if it is in package form and its label does not contain "the name and place of business of the manufacturer, packer, or distributor." Section 502(b) of the act does not authorize any exemptions from this requirement, so we cannot delete such information from the label simply to accommodate a bar code. Similarly, section 502(e)(1)(A)(i) of the act considers a drug to be misbranded if its label does not bear the drug's established name, so we cannot allow firms to exclude the drug's established name from the label. Additionally, section 351(a)(1)(B) of the PHS Act requires the package of a biological product to be marked with the product's proper name, the name, address, and applicable license number of the product's manufacturer, and the product's expiration date.

Furthermore, because the rule does not require lot number and expiration date information to be encoded, we decline to allow firms to remove the human-readable lot number and expiration date information from the label.

As for the comment seeking clarification of CPSC requirements, such matters are outside the scope of this rule and outside FDA's jurisdiction.

D. Does the Rule Require a Specific Type of Bar Code? (§ 201.25(c)(1))

1. Should the Rule Require Linear Bar Codes?

Proposed § 201.25(c)(1) would require the bar code to be a linear bar code that meets EAN/UCC standards. The preamble to the March 2003 proposal discussed, in some detail, how we decided to propose the use of linear bar codes and described the tension between trying to create a bar code requirement that would enable hospitals to buy scanning equipment with the confidence that their purchased equipment would not be rendered obsolete by new technology and trying to create a bar code requirement that offered some room for technological innovation (see 68 FR 12500 at 12508 through 12510). We also invited comment on whether we should consider the use of another symbol, standard, or technology, either with or in place of a linear bar code, the acceptance of that other symbol, standard, or technology among parties that would be subject to the rule, and the ability of hospitals to read or use other symbols, standards, or technologies (id. at 12510 and 12529).

(Comment 38) Many comments addressed the subject of linear bar codes. Several comments indicated the rule should require the use of linear bar codes because of their widespread use and because hospitals that are currently printing and scanning bar codes might be unable to upgrade their technology to support nonlinear technologies. One comment stated that our decision to require linear bar codes was "brilliant" and that our logic was "impeccable." Another comment said that linear bar codes could be used as an initial requirement and that technology currently installed in most hospitals cannot be upgraded to support nonlinear technologies. The comment added that if we required nonlinear bar codes, hospitals could face significant costs, and those hospitals that had already implemented linear bar code systems would be penalized. Another comment said that many applications of currently-used linear bar code systems are appropriate for suppliers and end users. The comment, which was submitted by a supply company for two large, not-for-profit hospital alliances, added that it shared our concern that "technologies/standards not be so advanced that hospitals are then unable to read and scan the bar codes," and it urged us to evaluate and promote new and emerging technologies "only as they become more readily available, and easily embraced by end users."

Another comment said we should require the bar code to meet certain "attributes;" the comment explained that this would provide some flexibility (although it did not explain what the attributes would be or what that flexibility was) while still ensuring a minimum standard. The comment added that the standard should be one that does not require hospitals to spend significant amounts of money to replace scanning equipment that would otherwise be acceptable for use. Two comments submitted by drug manufacturers expressed a similar opinion, stating that we should allow firms to use any linear bar code symbology so that firms could pick the symbology that best fits their needs.

One comment agreed with our proposal to require linear bar codes, but asked whether this included multidimensional codes. The comment claimed that multidimensional codes are several thinly-stacked linear codes. It added that, while older bar code scanners might not be able to read multidimensional codes, we should not be concerned about older scanners because most hospitals would not have scanners (and therefore would not need upgrades) or that hospitals with older scanners could upgrade those scanners.

Most comments, however, argued against the use of linear bar codes or asked us to encompass other technologies or to eliminate any reference to linear bar codes in the final rule. Many comments claimed that the rule would discourage or inhibit technological innovation, although they differed as to their preferred alternatives to a linear bar code. For example, one comment said laws and regulations should encourage technological innovation, but did not explain why our particular rule had to do so. Comments opposed to a linear bar code requirement generally advocated the following alternatives:

- Two-dimensional symbologies, on the grounds that such symbologies can be used on small packages, require less space compared to linear bar codes, can encode more data than a linear bar code (although the comments usually did not explain why more data capacity was needed), or can be placed on solid dosage forms themselves. Some comments specifically mentioned DataMatrix as a recommended symbology, whereas others referred to symbols or systems created or marketed by the firm who submitted the comment or to symbols that would be marketed in addition to the two-dimensional symbology. Other comments suggested using two-dimensional symbologies in conjunction with linear bar codes, with the two-dimensional symbology encoding lot number and expiration date information.
- The EAN/UCC system generally, on the grounds that the EAN/UCC system is widely used for drug products, has defined data structures, is used internationally, and would be less expensive compared to a regulatory approach that imposed no standard. However, other comments opposed the EAN/UCC system, declaring it to be "obsolete," or declaring that selecting the EAN/UCC would serve no purpose, would violate unspecified Federal laws, or would create a "monopoly" for the UCC. (We discuss comments on the EAN/UCC standard and HIBCC standards in more detail in comment 41 of this document.)
- Radio frequency identification chips. Some comments advocated the use of these chips and claimed that such chips could be an alternative to or used with the bar code and can be "highly effective" at identifying individuals and animals in a cost-effective manner. One comment noted that we had mentioned the comparatively high costs associated with radio frequency identification chips, but said we should not reject the chips on cost grounds alone. It said the pharmaceutical industry and health care providers should have the flexibility to choose identification techniques that are the most suited to a product or clinical setting. The comment added that if we required the use of a particular technology, we would create a conflict with our GMP principles because our GMP regulations do not require use of a particular piece of equipment, and we would be creating a disincentive for industry to develop more cost-effective identification systems.
- No standard or symbology at all. These comments advocated the use of "open" or "machine-readable" requirements so that market forces would decide which technologies would be used. One comment added that the use of nonlinear codes would make linear bar codes technologically obsolete by the time the final rule became effective. Another comment said we should require "automatic identification" instead of bar codes. Another comment suggested that manufacturers, repackers, and relabelers be allowed to customize symbols to meet customer needs, although the comment did agree that the NDC number should be present.

Comments were also divided on scanner technology. Most comments that addressed scanner technology declared scanner technology to be a "non-issue" because, they claimed, scanners can automatically discriminate between linear bar codes and can be reprogrammed or updated to read specific codes and even complex codes. One comment stated that the adoption rate of two-dimensional image readers is increasing and that such readers are becoming popular and less expensive. Others declared that high-resolution scanners can read both one- and two-dimensional symbologies and predicted that scanner manufacturers and suppliers would become very attentive to customer needs, so that scanner prices would fall. One comment said we should not be concerned about hospital costs at all or not consider such costs as limiting the industry's technological options; the comment argued that our consumer safety mandate precludes financial considerations, and claimed that the OTC drug industry "rises to the financial challenges presented by government regulations." The comment noted that the rule does not require hospitals to buy scanners, so the comment said, "it seems irrational to tailor these requirements based upon what hospitals may or may not do to ensure the safety of their patients."

In contrast, two comments indicated that technological limitations do exist. One comment agreed that scanners can read different symbologies, but said that printing technology, particularly with respect to variable information (such as lot number and expiration date), does not exist for high-speed, online printing. Another comment said that technology currently installed in most hospitals cannot be upgraded to support nonlinear symbologies; the comment said that if we required nonlinear bar codes, hospitals could incur significant costs, and those who had adopted bar code systems earlier would be "penalized."

(Response) The comments reflect the same array of differing opinions that we encountered at the public meeting and described in the preamble to the March 2003 proposal (see 68 FR 12500 at 12508 and 12509). As we noted in the preamble to the March 2003 proposal, there are two principal, yet contradictory, themes. One theme advocates a specific technology or standard to promote uniformity and to create the conditions under which hospitals could invest confidently in their bar code scanning equipment. The other theme advocates innovation so that newer and perhaps better technologies might be adopted easily. Each theme has its advantages, disadvantages, and assumptions. For example, linear bar codes have the advantage of being a proven, established technology that is easily recognized and easily used. They may also be less expensive than newer, emerging technologies, and are capable of encoding the NDC number. However, linear bar codes have several disadvantages, too, as they offer limited opportunity for innovation and may take up more label space than newer technologies. They also may encode less data compared to other technologies. Thus, if we were to require more data to be encoded on the packaging or labeling for any other reason (such as to allow tracking and tracing of drug products through the drug distribution system), a linear bar code might prove too limiting.

In contrast, a position that advocates innovation, with or without identifying a particular technology, has the potential advantages of encoding more data in a smaller space and perhaps accommodating new technologies as they arise without any additional rulemaking. The disadvantages, however, would include the possibilities that new, emerging technologies may be unproven, not widely accepted, or present unknown risks. For example, current radio frequency identification chips may have less reliable read rates than a linear bar code, and we do not know whether the equipment needed to detect such chips will present EMI issues for other medical devices in the hospital environment. As another example, failure to prescribe a specific technology might deter hospitals and other potential users from buying scanning or reading equipment because there would be no assurance that drug manufacturers would use the same or compatible technologies. As yet another example, requiring "automatic identification" of the NDC number could lead some manufacturers to develop their own, exclusive identifiers, and individuals might not recognize those identifiers, particularly if those identifiers are very small, not widely used, or placed under the product's label. Thus, if we were to revise the rule to promote innovation, with or without identifying a particular technology, hospitals and other potential users might be reluctant to purchase scanning or reading equipment, and the rule's benefits would not be fully realized.

After reviewing the comments, we have decided to retain the linear bar code requirement, but will consider revising the rule to accommodate newer technologies as they become more mature and established. Our decision to retain the linear bar code requirement rests largely on the following considerations:

- Linear bar codes are an established and proven technology. They are widely used in many sectors, and we are unaware of any significant problems associated with linear bar codes and their scanners. In contrast, new technologies, such as the radio frequency identification chip, are still being developed or refined, and we do not know, at this time, whether or when those new technologies have or will have widespread acceptance or become standardized, or whether the equipment used to detect or read those new technologies will present any safety or regulatory issues. For example, we do not know whether the equipment needed to detect radio frequency identification chips will present EMI or EMC issues for other devices that are used inside hospitals.
- Linear bar codes are easily recognized and easily used or applied. Most individuals can identify a linear bar code quickly and can scan it without much training. For example, various grocery store chains have installed "self-scan" stations where consumers scan the bar codes on their purchases themselves; the consumers are able to do this with little or no training. In contrast, two-dimensional symbologies come in different shapes and sizes, and they can be smaller than linear bar codes. As a result, individuals might not recognize two-dimensional symbologies as quickly and might not even recognize them as encoding data. If the rule allowed any "automatic identification" technology, then the risk that individuals might not recognize the technology or lack the proper equipment to read that technology would increase.
- Although most comments opposed the proposed linear bar code requirement, they failed to agree on alternative technologies. For example, some comments supported two-dimensional codes, particularly DataMatrix, but others supported radio frequency identification chips. Some comments endorsed products that a specific company had created, while others suggested that we simply require "automatic identification" technology. We believe that if the rule is to result in any significant benefits, it must specify a technology so that hospitals and other interested parties can purchase the correct scanning or reading equipment. We do not agree with the comment that claimed it would be "irrational to tailor these requirements based upon what hospitals may or may

not do." The rule's expected benefits are realized only if hospitals accept and use bar code technology. Therefore, we consider it prudent to consider what hospitals may or may not do when prescribing a regulation that is intended to benefit hospitals and their patients.

We also disagree that the rule prevents or otherwise hinders innovation. Automatic identification technologies are useful in other contexts, such as retail environments, and are used on many different consumer goods. In other words, the fact that the final rule requires the use of linear bar codes does not mean that all progress on other automatic identification technologies must stop, nor does it mean that innovative automatic identification technologies cannot be used on other products.

We recognize that other technologies may be able to encode more data in less space compared to linear bar codes. These arguments do not address the fact that this rule only requires firms to encode one piece of datum (the NDC number). A linear bar code is capable of encoding the 10-digit NDC number. Furthermore, such arguments do not address the principles of regulation that we must observe pursuant to Executive Order 12866; under section 1(b)(5), we are to design our regulations "in the most cost-effective manner to achieve the regulatory objective" and to consider "incentives for innovation, consistency, predictability, the costs of enforcement and compliance * * * flexibility, distributive impacts, and equity." Applying that principle to this rule, we believe that a linear bar code is the most "cost-effective" device for encoding the NDC number particularly when, as the comments suggest, the alternative would be to specify no technology at all or encompass technologies whose data encoding capacities far exceed the information required. A linear bar code requirement offers consistency, predictability, and lower costs of enforcement and compliance compared to technologies whose acceptance and reliability may be uncertain, or compared to a requirement that offered no criteria upon which hospitals could rely.

We realize that, in October 2003, we issued a report entitled "FDA Counterfeit Drug Task Force Interim Report" (see Food and Drug Administration Press Release, "FDA Anti-Counterfeiting Task Force Interim Report Focuses on High-Tech Weapons and Other New Promising Measures," dated October 2, 2003). This report discussed, among other things, anti-counterfeiting technologies, including "track and trace technologies." The final rule does not affect the development or adoption of such "track and trace technologies." Moreover, the final rule's underlying purpose (prevention of medication errors) is distinct from the purposes underlying anti-counterfeiting efforts (preventing the introduction of counterfeit drugs, facilitating identification of counterfeit drugs, minimizing consumer risk and exposure to counterfeit drugs, and avoidance of unnecessary costs on the prescription drug system). For example, in the medication error prevention context, the goal is to ensure that the right drug, in the right dose and right route of administration, is given to the right patient at the right time, so requiring a bar code on a unit-dose product is both necessary and appropriate, but information regarding the drug's origin (i.e., place of manufacture) is not essential. In contrast, for track and trace purposes, the goal is to ensure that individual products can be followed through the drug distribution system from the point of manufacture, but this goal does not necessarily extend down to the unit-dose package level.

Nevertheless, we reiterate that we will consider revising the rule to accommodate new technologies. As we explain in more detail in section II.I of this document, we expect compliance with the bar code requirement within 2 years after the final rule's effective date. At that time, we will begin examining other automatic identification technologies to determine whether we should amend the rule to allow the use of such technologies. We intend to conduct our examination in a public and transparent manner, with opportunity for public participation and comment. This could be done, for example, through a public meeting, a document inviting comment, an advance notice of proposed rulemaking, or other public forum. We will decide on the appropriate public forum at a future time.

Regarding the EAN/UCC system, the final rule allows the use of either EAN/UCC or HIBCC standards. We discuss the reasons behind this change at comment 41 of this document.

As for the comment concerning multidimensional codes, we note that there is disagreement whether certain symbologies are two-dimensional or simply a series of thin, one-dimensional codes stacked upon each other. Therefore, we cannot say, as a general matter, whether multidimensional codes are "linear bar codes" within this final rule because we cannot be sure that all parties share the same interpretation as to what constitutes a multidimensional code. Nevertheless, if a firm believes that a particular type of thin, one-dimensional codes that are stacked upon each other is still a "linear bar code" and intends to use that stacked code, that stacked code must be capable of being read clearly by scanning or reading equipment in the same manner as conventional linear bar codes to fall within § 201.25(c).

Finally, regarding one comment's claim that a linear bar code requirement would create a conflict with our GMP principles and will create a disincentive for industry development of other identification systems, we disagree. The linear bar code is not a manufacturing process; it is instead the visual representation of information. To use an analogy, we require labels to use the English language except where the article is to be distributed solely in the Commonwealth of Puerto Rico or in a U.S. Territory where the predominant language is not English (see 21 CFR 201.15(c)(1)). The English word is the visual representation of the information. If we had to accept any language on product labels (using the comment's GMP theory), then those using the product might not understand the information if they did not know the language used on the label. Furthermore, as we stated earlier in this response, the linear bar code requirement does not prevent anyone from developing innovative automatic identification technologies for any other industry for any other reason, and we will consider whether to accept other automatic identification technologies as they become more mature and accepted.

(Comment 39) One comment claimed it would be "legally indefensible" for hospitals to not choose two-dimensional systems if firms encoded lot number and expiration date information; the same comment also declared that some hospitals have their suppliers use two-dimensional codes so requiring linear bar codes would "force" those hospitals to "abandon" their systems because their suppliers would have to convert to linear bar codes.

(Response) We disagree with the comment. The only required piece of encoded data is the NDC number; hospitals are free to decide which scanning systems are best for them and are also free to decide whether to take advantage of any voluntarily-encoded lot number and expiration date information. We reiterate that we were unable to demonstrate that the benefits of encoding lot number and expiration date information would exceed the costs (see 68 FR 12500 at 12528 and 12529). Therefore, we disagree that it would be "legally indefensible" for hospitals to choose linear bar code scanners that are

perfectly capable of reading the NDC number contained in a linear bar code.

We also disagree that the final rule "forces" hospitals to abandon systems that they may have adopted before this rulemaking. If a two-dimensional scanning system is capable of reading both one- and two-dimensional symbologies, then the system should still be able to read the NDC number contained in the one-dimensional, linear bar code. We acknowledge, however, that if a hospital had insisted that its suppliers use only two-dimensional codes, the final rule's linear bar code requirement means that those suppliers must use a linear bar code to encode the NDC number. If the supplier wishes, it can encode lot number and expiration date information voluntarily using any symbology or automatic identification technology, so if the hospital insisted that the supplier use two-dimensional symbologies to encode lot number and expiration date information, the hospital's two-dimensional scanning system would still be useful.

(Comment 40) One comment asked whether "linear bar code" meant to include a specific symbology called "RSS–14 stacked." The comment explained that RSS–14 stacked "is essentially the same thing as RSS–14, except that it is printed in two rows in order to make it narrower at the expense of height." The comment said that a scanner can easily decode an RSS–14 stacked symbol, but added that, "I hope you get input from Scanner manufacturers on this point."

(Response) The comment is correct that RSS–14 stacked is a variant of the RSS–14 linear bar code and that it consists of two rows of two segments each. A "separator pattern" is printed between the two rows to eliminate cross-row scanning errors.

We believe that RSS–14 stacked symbology can be read by linear bar code scanners, although the scanners would have to be programmed to read RSS–14 codes and, depending on the scanner, may require more time to read a stacked code. Thus, we would consider RSS–14 stacked to be a linear bar code within the rule.

(Comment 41) Some comments questioned or criticized the proposed rule's reference to UCC standards. One comment said that "standards" refers to the data structure and not to symbologies. The comment asked if we meant that the linear bar code had to be one used by the UCC and that the NDC number had to be in a UCC data format.

One comment, submitted by a medical device trade association, supported use of either the EAN.UCC or HIBCC standards. The comment explained that most medical device manufacturers who are voluntarily labeling their products use the UPN system, and the EAN.UCC and HIBCC standards comprise the UPN system. HIBCC also recommended that the final rule not rely solely on EAN.UCC standards; it acknowledged that EAN.UCC standards are "by far the most prevalent in pharmaceutical labeling," but suggested that alphanumeric coding (which HIBCC standards use) "allows for literally-encoded information that is inherently safer" (than numeric coding alone).

HIBCC, as well as another comment, also stated that requiring EAN.UCC standards would create a monopolistic environment that might inhibit the development and implementation of technologies outside the EAN.UCC's purview. The other comment claimed that the UCC is not a standards body, has proprietary interests, provides sponsored bar codes to members as part of a variable annual fee, and that the linear bar codes that would be used on hospital patient identification bands are not EAN.UCC codes, so that there would be no benefit in selecting EAN.UCC standards. The comment protested that the EAN.UCC standard requirement would compel manufacturers to join the UCC even though adequate bar codes are available in the public domain, and declared that the rule would violate unnamed Federal laws by referring to EAN.UCC standards.

Another comment advocated use of both EAN.UCC and HIBCC standards. It suggested that this would encourage the adoption of automatic identification technologies as they develop, although the comment also recommended that linear bar codes be the initial technological requirement so that hospitals that have bar code systems are not disadvantaged.

(Response) Proposed § 201.25(c)(1)'s reference to UCC.EAN "standards" was intended to mean that the linear bar code had to be one that the UCC recognized and the data standard had to be in a UCC.EAN format (see 68 FR 12500 at 12509).

However, after considering the comments, we will interpret § 201.25(c)(1) as meaning that the linear bar code can be in any format, and the final rule gives firms the option of using EAN.UCC or HIBCC data standards. (We have revised the rule to refer to "EAN.UCC" standards, rather than "UCC/EAN" standards, in order to use the commonly-recognized abbreviation.) In other words, the manner in which the NDC number is encoded may be in an EAN.UCC or HIBCC format, and the manner in which the NDC number is visually presented must be a linear bar code. We have decided to give firms the option of using HIBCC data formats because HIBCC is a widely-recognized, nonprofit standards development organization whose standards, like EAN.UCC standards, are accredited by ANSI, and, as the comments suggested, allowing the use of either EAN.UCC or HIBCC standards may encourage further development and adoption of other automatic identification technologies. We also cannot preclude the possibility that some firms may prefer using alphanumeric code formats, which HIBCC uses, although we do not express any opinion as to whether alphanumeric codes are "safer" than numeric ones.

Allowing the use of HIBCC standards will also prevent the creation of the "monopolistic" environment that some comments feared. Although one comment claimed that the UCC is not a standards organization and implied that the UCC will benefit financially if we require bar codes to use EAN.UCC standards, our information is that the UCC is a not-for-profit standards organization.

We strongly recommend that manufacturers, repackers, relabelers, and private label distributors who are subject to the bar code requirement carefully consider their linear bar code symbology and standard choices. (The EAN.UCC or HIBCC standard may also determine the type of linear bar code symbology that is used.) The bar code's ability to affect medication error rates depends largely on the ability of hospitals to scan and interpret the data in the bar code. So, for example, choosing a commonly-used linear bar code symbology in a standard that scanners can easily read will have a greater impact on patient safety compared to a unique bar code symbology that few (if any) scanners are programmed to read.

2. Should the Rule Impose Any Conditions on the Bar Code?

Proposed § 201.25(c)(1)(i) and (c)(1)(ii) would require the bar code to be surrounded by sufficient blank space so that the bar code can be scanned correctly and require the bar code to remain intact under normal conditions of use. The preamble to the March 2003 proposal explained that some manufacturers had placed bar codes at locations where the bar codes are destroyed, damaged, or otherwise rendered useless (see 68 FR 12500 at 12510), so the proposal was intended to help ensure that the bar codes could be read correctly.

(Comment 42) One comment asked whether our reference to "blank space" referred to "quiet zones" in a bar code. A "quiet zone" in a bar code usually refers to a blank space that appears before the first bar and after the last bar.

(Response) Section 201.25(c)(1)(i)'s reference to "blank space" means that the linear bar code must be surrounded, on all four sides, by an area where no print occurs. This is slightly different from the "quiet zone" in a bar code because § 201.25(c)(1)(i)'s "blank space" would include areas that are above and below the bars.

We note, however, that we have previously indicated that we would not object if firms voluntarily encoded lot number and expiration date information (see 68 FR 12500 at 12508) and that such voluntarily-encoded information might appear in another machine-readable format with the linear bar code. For example, a firm might decide to use a composite code, where the NDC number is encoded in a linear bar code and the lot number and expiration date information is encoded in a two-dimensional code, with the two-dimensional component placed immediately above the linear bar code. If a firm elects to encode lot number and expiration date information voluntarily, and the voluntarily-encoded information is immediately adjacent to the required linear bar code, we will interpret the "blank space" requirement as applying to the entire composite code. In other words, we would not interpret the "blank space" requirement as preventing firms from using composite codes.

(Comment 43) One comment disagreed with proposed § 201.25(c)(1)(ii) insofar as it would require the bar code to remain intact under normal conditions of use. The comment said manufacturers should be allowed to print bar codes across perforations on blister packs as long as this did not affect the ability of the bar code to be scanned correctly. The comment said that printing the bar code across perforations would leave more space on the drug's label for other required information.

In contrast, another comment, submitted by a hospital, stated that the hospital's use of manufacturers' bar codes suggests that those codes sometimes fail to maintain their integrity. The comment said that linear lines become jagged, the markings degrade on the medium on which they are placed, or the bar code is placed in such a manner that it becomes unusable at the unit-dose level. The comment added that "it has been our experience that the bar code does not always agree with the written description of the product," and it said that we should continue to require the bar code to remain intact under normal conditions of use, particularly with respect to unit-dose packages.

(Response) Section 201.25(c)(1)(ii) requires the bar code to remain intact under normal conditions of use. Our fundamental goal is to reduce or prevent medication errors, and that goal is best served when the bar code remains intact under normal conditions of use. As we stated in the preamble to the March 2003 proposal, partial or incomplete bar codes can provide misleading information or not be read at all by scanners (see 68 FR 12500 at 12510); these potential problems are avoided if the bar code remains intact under normal conditions of use.

We realize that label space can be limited due to other information that our statutes or regulations require to be on a drug's label, but there may be alternatives to printing the bar code across perforations. For example, the final rule does not require the bar code to appear on the same surface as other label information. Likewise, the final rule does not prevent a manufacturer, repacker, relabeler, or private label distributor from revising its packaging to accommodate more label information. Thus, there may be other approaches that would ensure that the bar code remains intact under normal conditions of use.

E. Where Does the Bar Code Go? (§ 201.25(c)(2))

Proposed § 201.25(c)(2) would have the bar code appear on the drug's label as defined by section 201(k) of the act. The preamble to the March 2003 proposal explained that section 201(k) of the act defines "label" as:

> a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

Thus, by proposing to require the bar code to be on the drug's label, proposed § 201.25(c)(2) would result in bar codes on the drug's immediate container label as well as the outside container or wrapper, unless the bar code is easily legible and machine-readable through the outside container or wrapper (see 68 FR 12500 at 12511).

(Comment 44) One comment asked that we require the bar code to "be oriented on the label in such a way as to promote visual reading of the drug, strength, etc. while scanning the bar code." The comment explained that positioning the bar code in any other way would make users dependent on the scanning process instead of reading the drug's label. The comment said the only exception to its suggested placement restriction should be when the label does not support the bar code format, "with the burden on the manufacturer to justify the decision not to orient the label contents in this fashion."

(Response) We decline to revise the rule as suggested by the comment. By not specifying how or where the bar code must appear, the rule gives firms considerable flexibility in designing their labels to include the bar code and any other information required by law or FDA regulations.

Although we recognize the comment's concern about relying too much on technology, we disagree with the comment's assumption that users will become dependent on the bar code and will stop reading drug labels. The human-readable information on a drug's label goes far beyond the drug's NDC number. For example, under § 201.100(d)(1), a drug's labeling, whether or not it is on or within a package from which the drug is to be dispensed, must contain adequate information for the drug's use, including any relevant warnings, hazards, contraindications, side effects, and precautions; the drug's NDC number will not provide such information. As another example, section 502(b)(1) of the act declares a drug to be misbranded if its label does not contain the name and place of business of the manufacturer, packer, or distributor, while section 502(e)(1)(A) declares a product to be misbranded if its label does not contain the drug's established name, quantity or proportion of each active ingredient. In short, the bar code, and the NDC number contained in the bar code, act more as a link between the drug, the patient, and the patient's drug regimen and do not act as a surrogate for the drug's label.

(Comment 45) One comment focused on products that are individually packaged in a tray or pouch and are considered sterile within the tray or pouch. The comment said we should allow the bar code to be placed on the tray or pouch because the drug is supposed to remain sterile and not be removed from the tray or pouch until the time the drug is administered.

(Response) We decline to revise the rule as suggested by the comment. By requiring the bar code to appear on the

product's "label," § 201.25(c)(2) should result in a bar code on the immediate container label and the outer wrapper label. We are aware that, despite labeling instructions to the contrary, individuals might remove the outer wrapper and administer the drug product at a later time. Therefore, a bar code on the immediate container label may help prevent product mixups and medication errors that may occur when the drug product is removed from the outer wrapper and not used immediately.

As for the comment's drug sterility concern, we are not aware of any reason why including a bar code on the immediate container label as well as on the outer wrapper would adversely impact drug product sterility.

(Comment 46) Some comments focused on drug packaging. Some comments asked us to require bar codes on every unit-of-use package so that hospitals do not need to repack drugs. Several comments said we should require single dose packaging to make bar coding easier and accurate dosages more feasible. A different comment said that we should require manufacturers to have unit-dose packaging before they can market a drug. Other comments expressed concern that a bar code requirement might lead manufacturers to stop unit-dose or unit-of-use packaging or insisted that manufacturers use such packaging. Another comment asked us to require bar codes on "all packaging" as soon as possible, but a different comment agreed that we should require bar codes on unit-dose packages.

(Response) Regarding unit-of-use packages, the rule does require bar codes on such packages because § 201.25(c)(2) states that the bar code must appear on the drug's label. Section 201(k) of the act defines "label," in part, as "a display of written, printed, or graphic matter upon the immediate container of any article." Thus, because a unit-of-use package would be the immediate container for a drug, the unit-of-use package must bear a label and, under § 201.25(c)(2), have a bar code.

We decline to require manufacturers to use unit-dose or unit-of-use packaging. We recognize that concerns may exist over the rule's impact on such packaging, and we even raised the issue ourselves in our public meeting (see 67 FR 41360 at 41361). However, as we noted in the preamble to the March 2003 proposal, our industry contacts suggest that the costs associated with a bar code requirement "would not be great enough to significantly impact the market" and that "the expected reduction in hospital over-packaging could increase market demand for unit-dose products despite the cost difference" (see 68 FR 12500 at 12526). In other words, our industry contacts suggest that unit-of-use or unit-dose packaging decisions depend more on market demand than on bar code costs.

We also decline to require bar codes on "all packaging." The preamble to the March 2003 proposal explained that requiring every package to bear a bar code would result in too many packages being bar coded regardless of the potential impact—or absence of impact—on medication errors. For example, we explained that requiring bar codes on every package would mean that a shipping container would have a bar code, yet no hospital would dispense a drug directly from a shipping container to a patient (see 68 FR 12500 at 12511). We maintain that requiring bar codes on all packages would not be helpful insofar as medication errors are concerned.

(Comment 47) One comment said that medicated creams and ointments can now be reduced from multidose tubes to single dose units and that some drugs have specific dosage requirements that further support the use of single dose packaging to mitigate dosing errors. The comment asked what is being done to convert packaging of semi-solids into "the needed single dose units."

(Response) Issues regarding the production of unit-dose packaging, regardless of whether the drug is a liquid, cream, or solid, are outside the scope of this rule.

(Comment 48) One comment discussed how bar codes can be imprinted on pills. It described a system that uses images of the drug on medication schedules, prints bar codes on the drugs themselves, and uses two-dimensional bar codes with a "human recognizable icon or symbol" that identifies the "general type of pill."

Another comment said we should consider technologies that allow one- or two-dimensional bar codes to be printed on color film coated tablets and other solid oral dosage forms. It added that covert marking systems could also be used to address drug counterfeiting concerns, and printing codes on the drugs themselves could reduce unit-dose packaging requirements.

(Response) We decline to allow the bar codes to be printed on tablets and other solid oral dosage forms. As we stated in our response to comment 3 in section II.B.1 of this document, 21 CFR part 206 requires imprinting on solid oral dosage forms. The imprint was designed to help identify solid oral dosage forms, particularly in emergency situations, and to help consumers and health care professionals identify drugs (see 58 FR 47948; 21 CFR part 206). If we allowed the bar code to be imprinted directly on a pill, the bar code might interfere with that drug's imprint and could force health care professionals and hospitals to consult two different databases (one on drug imprint codes and another on bar codes) to determine which drug they had before them.

Imprinting a bar code on a drug may also raise drug stability issues or affect a drug's dissolution rate. Imprinting bar codes on tablets has other practical limitations; for example, the same imprinting approach cannot be used for drugs that are in liquid, gaseous, or semi-solid form.

As for covert marking systems and counterfeiting concerns, such matters are outside the scope of this rule.

F. Must Blood and Blood Components Bear "Machine-Readable" Information? (§ 606.121(c)(13))

Current FDA regulations, at 21 CFR 606.121(c)(13), state that the container label for blood and blood components "may bear encoded information in the form of machine-readable symbols approved for use by the Director, Center for Biologics Evaluation and Research." The proposed rule would amend § 606.121(c)(13) to require the use of "machine-readable information" in a format approved by the Director of the Center for Biologics Evaluation and Research (CBER) (the CBER Director). The CBER Director would review the machine-readable information technology to ensure that the minimum requirements are met regarding the accuracy of the required labeling information, spacing, and conditions of use.

Proposed § 606.121(c)(13) also would:

- Explain that all blood establishments that manufacture, process, repackage, or relabel blood or blood components intended for transfusion and regulated under the act or the PHS Act are subject to the machine-readable information requirement;
- State that blood and blood components intended for transfusion are subject to the machine-readable information requirement;
- Describe the minimum contents of the machine-readable information as a unique facility identifier, lot number relating to the donor, product code, and the donor's ABO blood group and Rh type;
- Specify that the machine-readable information must be unique to the blood or blood component, be surrounded by sufficient blank space so that the

machine-readable information can be read correctly, and remain intact under normal conditions of use; and

• State that the machine-readable information must appear on the label of the blood or blood component which is or can be transfused to a patient or from which the blood or blood component can be taken and transfused to a patient.

The proposal would not specify where the machine-readable information must appear on the label. As the preamble to the proposed rule explained, unlike the situation for other drugs, there is already substantial use of bar codes, notably ABC Codabar and ISBT 128, for blood and blood components (see 68 FR 12500 at 12512).

The preamble to the proposed rule invited comment on whether we should specify the use of ABC Codabar, ISBT. 128, a different symbology or standard, or simply require the use of "machine-readable information" approved by the CBER Director (id.). We also invited comment on whether a "machine-readable information" approach was feasible or whether we should require the use of EAN.UCC standards for blood and blood components.

(Comment 49) Many comments urged us to require the use of ISBT 128 rather than "machine-readable information." The comments referred to ISBT 128's international acceptance, "negligible" licensing and registration costs, superiority to Codabar, and acceptance by FDA, community blood centers, hospital blood banks, and other parties. Some comments pointed out that ISBT 128 is a data standard rather than a specific bar code; thus, to these comments, requiring ISBT 128 would cover newer machine-readable technologies, including two-dimensional symbols and radio frequency identification chips. One comment said that a failure to require ISBT 128 would hinder software development because software could use the identifiers and check digits in ISBT 128.

Other comments opposed requiring the use of ISBT 128 or suggested a different standard. One comment said that requiring ISBT 128 would force FDA to engage in new rulemaking if we decided that a new technology should be adopted. The comment did state, however, that if a single standard must be developed, it would support ISBT 128. Another comment, submitted by the UCC, said that EAN.UCC standards are used in commercial packages for shipping and receiving blood products; the comment said that if the blood products community requested it, the UCC would support creating bar code guidelines for blood products based on the EAN.UCC system. The comment added that Japan uses the EAN.UCC system for its blood components. Similarly, another comment said that the bar codes for blood components should be the same as those used on prescription and OTC drug products because pharmacies distribute blood components and nurses administer them.

(Response) The final rule retains the "machine-readable information" language with a clarification that the format, and not the actual information, must be approved by the CBER Director. This will enable § 606.121(c)(13) to accommodate changes in machine-readable technologies. For example, FDA recognized the use of Codabar (a specific bar code symbology) in 1985, and, in 2000, accepted the use of ISBT 128, version 1.2.0. More importantly, unlike the situation for other prescription drugs, there is already substantial consensus on the use of machine-readable symbols on blood and blood component labels. If we were to amend the rule to require the use of ISBT 128, we would ensure a uniform bar coding standard for blood and blood components and be consistent with the existing international standard, but we would also have to engage in new rulemaking if the international consensus standard changed to adopt a new symbology, standard, or technology. We believe that relying on an international consensus standard and requiring "machine-readable" information in a format approved by the CBER Director allows us to maintain uniformity in the symbologies or technologies used and accommodate new technologies in the future. We will announce, through guidance documents, our thinking and recommendations about acceptable technologies. In deciding whether a particular technology is acceptable for blood and blood component container labels, we will review the technology to ensure that the minimum requirements are met regarding the accuracy of the required labeling information, spacing, and conditions of use. We anticipate that the blood industry will standardize encoded machine-readable information and reading equipment, using our guidances to minimize, to the greatest extent possible, the need for "country-specific" software and the high cost associated with software development and maintenance.

We also decline to require the use of EAN.UCC standards on blood and blood component container labels. The blood industry currently uses a machine-readable code that does not meet EAN.UCC standards. If an EAN.UCC standard were implemented, it would require an overhaul of the United States blood industry and the international blood industry (because the resulting standard would depart from ISBT 128). We believe such an impact to be unnecessary given our understanding that bar code scanners can be programmed to recognize different symbologies.

Additionally, on our own initiative, we have revised § 606.121(c)(13)(i) to replace the word "repackage" with "repack." "Repack" is the preferred term to describe the act of putting a product into a different container.

(Comment 50) One comment said that the type of bar code was not as important as the underlying information contained in the code. The comment wanted to be able to track lot or donation numbers, the manufacturer's license number, country code, information about the blood group, product type, any modifications or special information, and dosage.

(Response) Section 606.121(c)(13)(iii) requires the machine-readable information for blood and blood components to contain, at a minimum,

• A unique facility identifier;
• lot number relating to the donor;
• product code; and
• ABO and Rh of the donor.

Thus, some information sought by the comment would already be required. Other pieces of information are also covered under ISBT 128. For example, ISBT 128 contains a "donation identification number;" this number can identify the country/collection facility, the year the donation was made, and a serial number associated with the donation. ISBT 128 also has an optional "special testing" field to convey the results of special or additional testing.

Although the comment also mentioned "dosage" information, dosage is not normally an issue for blood and blood components, so we decline to require dosage information as part of the machine-readable information for blood and blood components.

(Comment 51) The preamble to the proposed rule asked how the rule might affect hospitals where patients receive blood or blood components, particularly with respect to a hospital's decision to purchase a machine reader for blood and blood component codes and the linear bar codes on drugs and certain OTC drug products (see 68 FR 12500 at 12529).

We received several different opinions on this subject. One comment said that if hospitals had to change their blood and blood component coding systems to use EAN.UCC standards, it

would take "years" to develop data structures, change transfusion software, and implement the changes, and this would be a setback for industry standardization. In contrast, another comment, submitted by the UCC, said there would be little or no effect on hospitals because scanners can read multiple codes, and so use of the EAN.UCC system on all products would simplify software development and maintenance. It added that we should examine the cost of maintaining two standards (EAN.UCC and ISBT 128) within the global marketplace and any potential disruption if ISBT 128 were abandoned in favor of the EAN.UCC system.

Three comments said that ISBT 128 could be easily compatible with any bar code system. The comments said that software systems developed for blood centers and many hospital blood banks are already "ISBT 128 ready."

(Response) As we stated in our response to comment 49 in section II. F of this document, we decline to require the use of EAN.UCC standards on blood and blood component container labels. We agree with those comments stating that bar code scanners can be programmed to recognize ISBT 128 in addition to other symbologies, and requiring the blood industry to convert to EAN.UCC standards would affect efforts to adopt uniform standards within the United States and the international blood industry.

(Comment 52) One comment asked if "blood component" included intravenous immune globulin (IGIV) and albumin. The comment felt that ISBT 128 and the data that would be encoded for blood components are inappropriate for IGIV and albumin. The comment added that IGIV and albumin are distributed by pharmacies and administered by nurses, so they should be treated like other drugs.

(Response) IGIV and albumin are therapeutic products that would be subject to the bar code requirement for drug products through § 610.67. In other words, IGIV and albumin are not subject to the bar code requirements for blood and blood components, but they are subject to the bar code requirements for drug products.

(Comment 53) One comment asked us to clarify whether source plasma used to manufacture plasma-derived therapies is subject to a bar code requirement. The comment said that Source Plasma, when not intended for use as a final dosage product, should not be subject to the bar code requirement.

(Response) Source Plasma is not subject to the bar code requirements. As stated in § 606.121(a), the container label requirements for blood and blood components are not applicable to Source Plasma. The machine-readable requirements apply only to blood and blood components intended for transfusion (see § 606.121(c)(13)). Because Source Plasma is intended as source material for further manufacturing use (see § 640.60 (21 CFR 640.60)) and is not intended for transfusion, Source Plasma does not fall within the bar code requirement.

(Comment 54) Two comments suggested that we require bar codes on certain medical devices such as blood bags, filters, and apheresis kits.

(Response) We decline to adopt the comments' suggestion. As we stated in our response to comment 29 above, medical devices present different regulatory issues and challenges compared to drugs, and, unlike drugs, medical devices do not have a unique, reliable identifying number. Consequently, we continue to omit medical devices from the final rule.

G. Must Biological Products Have a Bar Code? (§ 610.67)

The proposed rule would require biological products (other than devices, blood, and blood components intended for transfusion) to comply with the bar code requirements at § 201.25.

We received no comments that were specific to § 610.67. However, on our own initiative, we have revised § 610.67 to clarify that the bar code requirement at § 201.25 does not apply to devices that are regulated by CBER (such as devices that are the subject to the biologics licensing application (BLA), premarket approval (PMA) application, or 510(k) requirements), or to blood and blood components intended for transfusion. As we explained in section II.B.5 of this document, devices are exempt from the bar code requirements, whereas blood and blood components intended for transfusion are subject to the "machine-readable" information requirements at § 606.121(c)(13).

H. What Other Comments Did We Receive?

Many comments were not directed at any particular provision but instead asked procedural questions (such as how bar code information should be reported to us), asked us to create more documents (particularly with respect to bar code quality), or discussed whether we should keep these regulations in effect after bar coding, for medication error purposes, became widespread. We discuss these comments in this section.

1. Comments Seeking More Action by FDA

(Comment 55) The preamble to the proposed rule stated that firms whose drug products are already approved or marketed could notify us about the addition of a bar code to their product labels through an annual report (see 68 FR 12500 at 12512).

One comment disagreed, stating that we should apply standard reporting requirements for such label changes. It said that annual reports are not sufficient to provide the maximum benefit to those using the bar codes. It suggested that certain third-party databases might be able to create new data fields that provide information on drugs and drug packaging on a "very frequent" basis.

(Response) The comment misunderstood our position. When we referred to the annual report, we meant that firms whose drug products have already been approved would simply notify us that they had added a bar code to their package labels; that notification to FDA could occur on an annual basis. Annual reports are commonly used to report minor label changes to us.

As for transferring information regarding NDC numbers to databases (which bar code scanners and hospital computers might consult in order to decipher the bar code), we routinely make such information available. Moreover, as we stated in the preamble to the proposed rule, we are collaborating with the National Library of Medicine and the Department of Veterans Affairs to create a collection of up-to-date, computer-readable electronic labels for marketed drug products (see 68 FR 12500 at 12511). This collaboration contemplates daily updates of information and, as a result, constant updates of new NDC numbers.

In short, we intend to make NDC number information available to databases constantly. We do not intend to release NDC number information only once per year.

(Comment 56) Several comments asked us to draft additional documents. For example, one comment said we should issue a guidance document to instruct hospitals and others to use the same bar coding methods and principles that manufacturers use if hospitals and other entities decide to bar code or to repack drugs. Another comment suggested that we should issue a guidance document advising firms on how to encode lot number and expiration date information if they choose to do so voluntarily.

(Response) We decline to create the guidance documents that the comments

sought. In general, hospitals are exempt from the bar code requirements, and so we believe that our resources are better spent developing regulatory materials, when appropriate, for regulated entities. Additionally, we lack sufficient expertise to advise interested parties on bar coding methods and equipment, but we believe there are sufficient documents and standards issued by third parties such that, at this time, we do not need to generate such documents or standards ourselves.

(Comment 57) One comment asked us to provide expedited review of premarket submissions for blood establishment computer software. The comment said that software users must validate software upgrades before such improvements are applied to patient care, but said that validation would require extensive time.

(Response) We decline, in this rulemaking, to provide for expedited review of premarket submissions for blood establishment computer software. The current rulemaking is aimed at describing the bar coding requirements for drugs and similar "machine-readable" information requirements for blood and blood components. In the absence of any submissions, it would be both premature and beyond the scope of the current effort to address requests for expedited PMA reviews for blood establishment software. However, in this regard, we have made available a "Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software" on January 13, 1997, and comments on FDA guidance may be submitted at any time to the contact listed in that guidance.

(Comment 58) One comment asked us to create an expedited submission category for packaging changes that would be needed to comply with a bar code requirement. The comment predicted that many firms would submit supplemental applications to us so that we might approve packaging changes, and the comment predicted that a large number of supplemental applications would prevent us from approving packaging changes quickly.

(Response) We decline to adopt the comment's suggestion. We interpret the comment as suggesting that we may need to expedite review of supplemental applications regarding packaging changes and that the comment's use of the word, "expedited," means that we should take such supplemental applications out of the normal review process and review them first, regardless of the order in which they arrived relative to other types of applications.

We do not believe that expedited review will be necessary for several reasons. First, most packaging changes that would be done to accommodate a bar code should not require prior FDA approval. Packaging changes can be reported to us in various ways, through a supplement of changes being effected (see 21 CFR 314.70(c)), a supplement of changes being effected in 30 days (see § 314.70(g)(2)), and an annual report (see § 314.70(g)(3)); none of these supplements or reports require prior FDA approval.

Second, for drugs that have already received FDA approval by the time of the final rule's effective date, we are giving such drugs 2 years to comply with the bar code requirement. If a firm believes that its packaging change is of a type that needs prior FDA approval, this 2-year period should give the firm and FDA sufficient time to prepare and review the supplement.

If a firm still believes that it needs expedited review of a packaging change, we would consider such requests under our existing regulations and procedures (see § 314.70(b); Center for Drug Evaluation and Research, "Requests for Expedited Review of Supplements to Approved ANDA's and AADA's," Manual of Policies and Procedures (MAPP) 5240.1 (dated November 1, 1995)); Center for Drug Evaluation and Research, "Requests for Expedited Review of NDA Chemistry Supplements," MAPP 5310.3 (dated June 11, 1999)). Under § 314.70(b), applicants may ask for expedited review of a supplement if a delay in making the change would impose an "extraordinary hardship" on the applicant, and we consider expedited review requests on a case-by-case basis and undertake such expedited reviews if adequate review resources are available.

For packaging changes involving a biological product, see 21 CFR 601.12 and 314.70.

2. Comments Relating to Bar Code Problems or Quality

(Comment 59) One comment asked how people might report bar coding and scanning errors.

(Response) As we stated in the preamble to the proposed rule (see 68 FR 12500 at 12510), the bar code would be part of the drug's label, so errors in applying the bar code to the label should be handled like any other packaging or labeling operation problem under GMPs (see 21 CFR 211.122, 211.125, 211.130, 211.180, and 211.184)).

If an individual encounters a problem scanning the bar code, and the problem is due to the bar code's quality, then such scanning problems can be reported to FDA through the Drug Quality Reporting System. The Drug Quality Reporting System encourages health care professionals to voluntarily report observed or suspected defects or quality problems with marketed drug products. The agency receives reports through the MedWatch Program.

For biological products, manufacturers can report scanning problems as biological product deviations under existing reporting procedures (see 21 CFR 600.14 and 606.171).

(Comment 60) Some comments asked us to audit or monitor bar code quality. One comment said we should require the bar code to maintain a passing grade of C or better to ensure its quality.

(Response) As we noted in the preamble to the proposed rule, various bar code standards exist, as do standard procedures for bar code verification (see 68 FR 12500 at 12510–12511). Given these standards and other documents, as well as the comparatively greater expertise of standards organizations such as the American Society for Testing and Materials and the International Organization for Standardization, we do not intend to audit or monitor bar code quality aggressively. We also believe that our GMP requirements and the Drug Quality Reporting System provide additional safeguards to ensure bar code quality.

3. Comments Regarding FDA's Future Involvement With Bar Codes

(Comment 61) Two comments discussed our future involvement with a bar code requirement. One comment said that if the rule referred to EAN.UCC standards, without specifying the use of linear bar codes, we would not need an "exit strategy" to allow for future technologies and innovation.

In contrast, another comment said that the proposed rule had gained the pharmaceutical industry's attention and that there is "considerable momentum" towards putting bar codes on drugs. The comment said this voluntary effort would continue even if we did not issue a final rule and said that the market would decide which automatic identifiers meet health care needs so that we no longer had to be involved. The comment said our continued involvement in this area would not be "efficient;" it said we could monitor progress towards the use of automatic identifiers, but should not manage it. It also suggested that we include a "sunset" date in the final rule because it claimed the rule created "enormous uncertainty" for hospitals because the rule permitted inclusion of other

information in other formats. Thus, if a "sunset"date existed, manufacturers would be able to use any one- or two-dimensional code after that date, and this would give all parties "a fair opportunity to invest in the technology that will meet the future needs of their institutions."

(Response) As we stated earlier in our response to comment 38 in section II.D.1 of this document, we intend to revisit technological issues in the future, but we believe that linear bar codes, as an initial requirement, will help prevent or reduce medication errors.

We agree, in part, with the comment that suggested that market forces could reduce the need for continued FDA involvement. We note that, for blood and blood components, interested parties have been able to agree on domestic and international standards for encoding certain information. For example, ABC Codabar is a bar coding system that the health care industry adopted for blood and blood components and is still commonly used in the United States. ISBT 128 is the product of a consensus conference held by the International Council for Commonality in Blood Bank Automation and is now preferred over ABC Codabar. The use and acceptance of ABC Codabar and ISBT 128 demonstrates that interested parties can agree on specific data standards and formats and, more importantly, use those standards and formats.

Unfortunately, as the comments to the July 26, 2002, public meeting and the proposed rule demonstrate, consensus is either absent or, at best, is still developing when it comes to bar codes or automatic identifiers for drugs. We continue to encourage manufacturers, repackers, relabelers, private label distributors, hospitals, scanning or reading equipment manufacturers, and other interested parties to explore avenues for greater cooperation and consensus. We believe that all parties may benefit by reducing medication errors through the use of bar codes or other automatic identification technologies. For example, manufacturers and hospitals may see fewer medication errors and, as a result, reduced liability. Patient safety would be enhanced as patients would experience fewer medication errors. Scanning or reading equipment manufacturers would benefit by knowing how to develop or program their equipment more effectively and efficiently (based on the bar codes or identifiers used by manufacturers and accepted by hospitals). Parties could also agree to encode information that we do not require as part of the bar code, such as lot number and expiration date information, and could agree on the automatic identifier(s) for encoding that information and the equipment for reading or interpreting the encoded information. If parties could develop consensus mechanisms that enjoy widespread or unanimous support among those who would apply, use, and develop automatic identification technologies, then we could possibly reduce our involvement.

We disagree, however, with the comment's claim that the rule creates "enormous uncertainty" for hospitals. The linear bar code establishes a minimum, technological "floor" that hospitals will be able to rely upon when deciding on equipment purchases. Although the comment is correct that we will not object if firms encode lot number and expiration date information voluntarily, we reiterate that the inclusion of such information is voluntary, and so we will not dictate how such voluntarily-provided information is presented. Moreover, creating a "sunset" date as the comment suggested could increase the possibility that hospitals will not invest in equipment until the sunset date is reached. Hospitals might decide to defer their investments because, when the sunset date arrives, drug manufacturers could decide to switch to two-dimensional symbologies, thereby making one-dimensional scanners either obsolete or in need of upgrades. So, under a "sunset" scenario, hospitals could decide to wait until after the sunset date to see whether manufacturers, repackers, relabelers, and private label distributors agree on a particular technology, and this would reduce the rule's benefits.

(Comment 62) One comment said we should review the bar code requirements on a regular basis to determine whether they are preventing or reducing medication errors.

(Response) We intend to monitor medication error reports and published literature to assess the rule's impact on medication error rates. As more drugs are bar coded and as more hospitals become capable of scanning and interpreting those bar codes, we will be interested to hear from hospitals about their experiences using bar coded drugs and the impact on medication errors.

4. Miscellaneous Comments

(Comment 63) One comment said that scanning devices must be ergonomically designed and the labels must be small enough to fit on drug products. The comment added that scanners must be able to read labels that are on curved surfaces.

(Response) Issues concerning scanner design and capability are outside the scope of this rule. Given the abundance and variety of scanners (i.e., whether the scanner is "tethered" to another device or "wireless" or whether the scanner is "heavy duty" to withstand impact in case it is dropped), we believe that hospitals should be free to choose the scanners or reading equipment that is best suited to their needs.

Similarly, issues concerning label size are outside the scope of this rule.

However, with respect to reading bar codes on drug labels, the bar code's "readability" would be subject to GMPs, and, under 21 CFR 211.122, any labeling material (which would include the product label) that does not meet appropriate written specifications "shall be rejected to prevent their use in operations for which they are unsuitable."

(Comment 64) One comment said that the rule could advance other public health objectives or issues, such as product traceability, authentication, counterfeiting, and terrorism. It said we should not ignore such issues during the rulemaking process.

(Response) We know that various public health initiatives might benefit from technological solutions. However, consideration of other public health initiatives should occur in a different forum where all interested parties have the opportunity to consider the initiative or issue and explore options (see, e.g., 68 FR 52773, September 5, 2003) (announcing a public meeting on FDA's efforts to combat counterfeit drugs)). It would be inappropriate for this final rule to invoke other reasons for a bar code requirement when the administrative record has focused almost exclusively on the need to prevent or reduce medication errors.

(Comment 65) One comment said that the rule could have a negative impact on hospital pharmacies if the bar code technology does not recognize generic drug products. The comment also stated that, if a pharmacy stocks one brand, and then stocks a different brand the next week, drugs from both brands might still be located in automated dispensing machines; in such a scenario, the comment asked how bar coding would work.

(Response) The comment may have misunderstood the rule. Regarding generic drug products, the final rule requires the bar code to contain the drug's NDC number. Generic drug products have their own NDC numbers that are distinct from those used by other manufacturers. Thus, there should be no technological barrier to using the

bar code to identify generic drug products.

As for automated dispensing machines, this rule is neither intended nor designed to assist in inventory control matters. Thus, a hospital pharmacy that mixes drugs from different sources in its automated dispensing machines (and presumably removes those drugs from their packages and accompanying labels) may not be able to use bar code technology to differentiate between different drugs inside the automated dispensing machine.

(Comment 66) One comment said we should address the subject of prescribers' handwriting because misread or illegible handwriting may lead to medication errors. It added that we should address drug names that sound alike and copies of "NCR paper" that are difficult to read. The comment did not explain what it meant by NCR paper or why copies of such paper are difficult to read.

(Response) Issues regarding handwriting and paper quality are outside the scope of this rule and may also be outside our jurisdiction.

(Comment 67) One comment said we should do "whatever it takes" to decrease medication errors and increase the productivity of nursing staff. Another comment said that nurses need a trustworthy, correct, and speedy system that reduces workload and is more efficient than manual systems. It urged that nursing staff be involved and adequately trained in bar coding processes.

(Response) The final rule should help detect potential medication errors before they can result in harm to patients and, as a result, decrease medication errors. However, insofar as nursing staff productivity is concerned, we believe that there may be an initial small productivity loss due to the use of new technology (see 68 FR 12500 at 12527), but that, overall, the rule's benefits greatly exceed productivity loss.

As for involving nursing staff in bar code systems development and training, such matters are outside the scope of this rule and may also be outside our jurisdiction.

(Comment 68) One comment said that the pharmaceutical industry could support the necessary hardware and software to maintain databases on drug sample use and to alert pharmaceutical manufacturers when drug inventories are low. The comment suggested other data uses and database possibilities, such as making data available for physicians and the pharmaceutical industry (but protecting patients' identities) and having FDA control or regulate large databases on drug use and drug safety.

(Response) Issues concerning the creation, financing, and maintenance of databases are outside the scope of this rule. Aside from our MedWatch program, we have no plans to control or regulate large databases on drug use and drug safety.

(Comment 69) One comment said we should cover "non-standard" items at minimal cost to the pharmacy. The comment listed ointments, lipids, crash cart supplies, and total parenteral nutrition as examples of "non-standard" items, but it did not explain why such products needed bar codes.

(Response) We decline to revise the rule as suggested by the comment. Requiring bar codes on prescription drugs, OTC drugs that are commonly used in hospitals and dispensed pursuant to an order, blood, and blood components will cover the majority of products that could present a risk of medication error. Thus, to the extent that any of the comment's "non-standard" items are prescription drugs or OTC drugs that are commonly used in hospitals and dispensed pursuant to an order, they would be subject to the bar code requirement unless otherwise exempted.

As for a product's cost to pharmacies, we do not regulate the costs that firms may charge to pharmacies. Thus, product cost issues are beyond the scope of this rule, although we consider the rule's economic impacts in section VII of this document.

(Comment 70) One comment asked for our guidance regarding scanners on certain intravenous infusion pump systems. The comment said that two manufacturers have infusion pump systems that are equipped with scanners, but the scanners only read bar codes used by the same manufacturer. The comment said that this practice forces hospitals to buy drugs from the same manufacturer who made the infusion pump system and creates a financial hardship on hospitals. The comment acknowledged that hospitals can relabel drugs themselves, but said that hospital relabeling would eliminate the rule's benefits.

(Response) Issues concerning scanner capabilities in existing infusion pump systems are outside the scope of this rule. However, as we stated in our response to comment 41, the bar code's ability to affect medication error rates depends largely on the ability of hospitals to scan and interpret the data in the bar code. So, for example, choosing a commonly-used linear bar code symbology in a standard that scanners can easily read will have a greater impact on patient safety compared to a unique bar code symbology that few (if any) scanners are programmed to read.

I. How Will We Implement the Rule?

The preamble to the proposed rule suggested that we would give affected parties 3 years to comply with the bar code requirement for human prescription drugs and OTC drugs commonly used in hospitals and dispensed pursuant to an order (see 68 FR 12500 at 12512). It suggested a similar implementation period for blood and blood components (see 68 FR 12500 at 12514). The preamble to the proposed rule also invited comment on whether the implementation period should be shortened (see 68 FR 12500 at 12529, question 9).

(Comment 71) Many comments said that a 3-year implementation period is sufficient or acceptable, although some expressed a desire to have the final rule effective at the earliest possible date. One comment agreed that a 3-year implementation period is sufficient, but cautioned that packaging issues could complicate implementation.

In contrast, many other comments advocated a shorter implementation period. These comments recommended different implementation periods, such as:

- 2004 or December 31, 2004. Several comments sought implementation by 2004 because they believed that manufacturers, repackers, relabelers, and private label distributors could comply earlier or because, in one case, the entity submitting the comment explained that its contracts with drug suppliers require bar codes at the unit-of-use package level by 2004.
- 2 years. One comment noted that some drug manufacturers are already placing bar codes on their products, so the comment felt the industry could meet a 2-year implementation period. Another comment, from a drug manufacturer, endorsed a 2-year implementation period because the rule only required the NDC number to be encoded in the bar code. A different comment said that manufacturers should obtain FDA approval of label changes (due to the bar code) within 2 years, but added that the implementation period could be reduced to 18 months if manufacturers supported such a reduction.
- a tiered implementation strategy whereby drugs that we approve after the final rule's effective date must comply with a bar code requirement at an earlier time. Five comments suggested a 2-month period for drugs approved after the final rule's effective date, and some

comments suggested that drugs approved before the final rule's effective date should have no more than 3 years to comply.

One comment requested that we shorten the implementation period without specifying a different implementation period.

One comment declared that shortening the implementation period would be useless because hospitals would not be ready to use bar codes and because manufacturers have not analyzed possible changes to the NDC number.

One comment asked whether products that are already on the market without a bar code can remain on the market through their expiration date.

Only one comment advocated a longer implementation period. The comment said the implementation period should be 5 years if we refuse to create a general exemptions provision. The comment stated that the additional time would allow for further development of new technologies to address space limitations on small products.

(Response) We have decided to amend the implementation scheme as follows. First, for drugs that are approved on or after the effective date of this rule, we would expect compliance within 60 days after the drug's approval date. Early implementation of a bar code requirement for newly-approved drugs is appropriate because such drugs will not present the same label redesign issues as previously-approved drugs.

Additionally, early implementation of a bar code requirement for newly-approved drugs will create an incentive for all parties to develop and use bar codes, and this should have a beneficial impact on patient safety.

Second, for drugs approved before the effective date of this rule, we would expect compliance within 2 years after that date. We agree with the comments that companies have already demonstrated their ability to put bar codes on their drug products quickly and agree that requiring only the NDC number in the bar code should facilitate implementation. A 2-year implementation period will also enable firms to exhaust existing stock. If a drug has an expiration date that exceeds 2 years, and the drug was not subject to the bar code requirement at the time it was marketed, we will allow that drug to remain on the market without a bar code.

However, we recognize that we cannot preclude the possibility that some drug products may be difficult to bar code, either because of their containers, size, or other complications. Therefore, if a manufacturer, repacker, relabeler, or private label distributor can demonstrate to us that, for technological reasons, it cannot comply within 2 years after the final rule's effective date, it should contact us. If we agree that the firm cannot comply within 2 years, we may give the firm an additional year to comply with the rule. We will not entertain any requests for additional time based on non-technological considerations; for example, if a firm is unable to decide on which linear bar code symbologies to use, that indecision would not justify an additional year to comply with the rule. As another example, if a firm decided to encode more information (other than the NDC number) voluntarily, but was experiencing difficulties encoding that additional information, we would not agree to an additional year to comply with the rule.

Firms who believe that technological reasons prevent them from complying within 2 years of the rule's effective date should contact the center responsible for their particular product. For human drug products, the contact office is the Office of New Drugs Compliance (HFD–020), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

For biological products, including blood and blood components, the contact office is the Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852.

As for those comments that would defer implementation until any regulatory changes to the NDC number occur or would seek a 5-year implementation period if we refuse to create a general exemption provision, we decline to adopt their suggestions. Because we have not yet issued a drug establishment registration and listing proposal (which would include provisions regarding possible regulatory changes to the NDC number), we cannot predict how the NDC number will change or whether it will change at all. We can predict that the NDC numbers for drugs approved after the final rule's effective date should be unique (because we have devoted more attention to NDC numbers recently to ensure that they are unique), will remain unchanged even if we revise the NDC number system, and will be capable of being encoded in bar codes.

Additionally, we decline to extend the implementation period to 5 years to allow for possible technological developments for small products. As we noted in our response to comment 27, firms have placed linear bar codes on products as small as 1 mL vials, and the UCC itself stated that no pharmaceutical member to the UCC had presented a case of a product that was too small to bear an RSS bar code. Thus, existing bar code symbologies may be satisfactory for small packages. We also remind parties that there may be other options, such as changing packaging, to accommodate the bar code.

(Comment 72) One comment focused on blood and blood components. The comment said the implementation period should be 1 year. The comment explained that ISBT 128 has been approved by CBER and the American Association of Blood Banks (AABB) since 2000 and that a 1988 AABB implementation task force had recommended an 18-month implementation plan.

(Response) For uniformity among products we believe that a 2-year implementation period is appropriate for human drug products, biological products, and blood and blood components. Blood banks are, of course, free to implement the requirements of the rule on a shorter time schedule.

(Comment 73) One comment asked if we could offer any incentives to manufacturers to get them to comply quickly with a bar code requirement.

(Response) We have given manufacturers, repackers, relabelers, and private label distributors considerable flexibility in selecting their own linear bar code symbologies, their data standards (i.e., EAN.UCC or HIBCC), and the bar code's placement on the label. We have even simplified, to the maximum extent we can, the manner in which manufacturers, repackers, relabelers, and private label distributors would report their bar code label changes to us (i.e., through annual reports rather than supplements that require our approval). These efforts should minimize the regulatory burden on manufacturers (and others who are subject to the bar code requirements) and make it easier for them to comply with the rule at the earliest opportunity.

III. Legal Authority

We believe we have the authority to impose a bar coding requirement for the efficient enforcement of various sections of the act. These include sections 201(n), 201(p), 501, 502, 503, 505, and 701(a)) of the act (21 U.S.C. 321(n), 321(p), 351, 352, 353, 355, and 371(a)), and sections 351 and 361 of the PHS Act (21 U.S.C. 262 and 264).

A bar coding requirement for drugs, including biological products, would permit the efficient enforcement of the

misbranding provisions in section 502(a) and (f) of the act, as well as the safety and effectiveness provisions of sections 201(p) and 505 of the act. Bar coding is expected to significantly advance: (1) The provision of adequate directions for use to persons prescribing, dispensing, and administering the drug; (2) the provision of adequate warnings against use by patients where a drug's use may be dangerous to health; and (3) the prevention of unsafe use of prescription drugs.

Section 502(a) of the act prohibits false or misleading labeling of drugs. This prohibition includes, under section 201(n) of the act, failure to reveal material facts relating to potential consequences under customary conditions of use. Information in a database that could be readily accessed through the use of a bar code, such as the drug's strength, dosage form, route of administration, and active ingredient and drug interactions is material with respect to consequences which might result from use of the drug under such conditions of use. Because all of the drugs (prescription drugs and the subset of covered OTC drugs) covered by this final rule may be used in the hospital setting, such use in hospitals can be considered the "conditions of use as are customary or usual." Bar coding can be expected to reduce the incidence of the following types of medication errors:

- Administering the wrong dose to a patient;
- administering a drug to a patient who is known to be allergic;
- administering the wrong drug to a patient or administering a drug to the wrong patient;
- administering the drug incorrectly;
- administering the drug at the wrong time; and
- missing or duplicating doses.

Because information accessed through use of the bar code will reveal material facts relating to potential consequences under customary conditions of use, the bar code requirements are justified under section 502(a) of the act.

Section 502(f) of the act requires drug labeling to have adequate directions for use, adequate warnings against use of a drug product by patients where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration, in such manner and form, as necessary to protect users. The bar code would make it easier for the person administering the drug to have full access to all of the drug's labeling information, including directions for use, warnings, and contraindications. Moreover, because the bar code's information would go to the computer where it could be compared against the patient's drug regimen and medical record, the person administering the drug will be able to determine whether the right patient is receiving the right drug (including the right dose of that drug in the right route of administration) at the right time. The person administering the drug will also be able to avoid giving products to a patient who might be allergic to, or otherwise unable to take, a particular drug. Because the bar code will facilitate access to information including adequate directions for use and adequate warnings, the bar code requirements are justified under section 502(f) of the act.

In addition to the misbranding provisions, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act, we will approve a new drug application (NDA) only if the drug is shown to be safe and effective for its intended use under the conditions set forth in the drug's labeling. Bar coding would allow health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is given to the right patient at the right time. Thus, bar coding will ensure the safe and effective use of drugs by reducing the number of medication errors in hospitals and other health care settings.

Section 505(b)(1)(D) of the act requires an NDA to contain a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug. The same requirement exists for abbreviated new drug applications (see section 505(j)(2)(A)(vi) of the act) and for biological products (see 351(a)(2)(B)(i)(II) of the PHS Act). Information in the bar code would reflect the facilities and controls used to manufacture the product. As described in section II.C.1 of the preamble, the NDC number would identify the manufacturer, product, and package.

A bar coding requirement also would permit the efficient enforcement of the adulteration provisions of the act. A regulation requiring the bar coding of products should avert unintentional mix up and mislabeling of drugs during labeling, packaging, relabeling, and repacking. A bar coding requirement therefore helps prevent adulteration under section 501(a)(2)(B) of the act. It is a manufacturing method or control necessary to ensure that a drug product has the identity and strength its labeling represents it to have, and meets the quality and purity characteristics which the drug purports or is represented to possess.

Requiring that the bar code be surrounded by sufficient blank space, and remain intact under normal conditions of use, would also further the efficient enforcement of section 502(c) of the act. Section 502(c) of the act provides that a drug product is misbranded if: any word, statement, or other information required by or under authority of the act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The requirement that the bar code be surrounded by sufficient blank space and remain intact under normal conditions of use would help ensure that the bar code can be read easily and accurately so that its safety benefits may be realized.

Because licensed biological products, including blood, are also prescription drug products, the sections of the act discussed elsewhere in the legal authority section provide ample legal authority for issuance of this regulation. However, there is also additional legal authority for the rule's requirements as to biological products regulated under the PHS Act. Section 351(a) of the PHS Act provides for the approval, as well as the suspension and revocation, of biologics license applications. The bar code requirement for biological drugs, and the machine-readable information requirement for blood and blood components, are designed to ensure the continued safe and effective use of licensed biological products. Thus, we may refuse to approve biologics license applications (BLAs), or may revoke already approved licenses, for biological products or blood and blood components that do not have such codes or information.

Additionally, section 361 of the PHS Act authorizes regulations necessary to prevent the introduction, transmission, or spread of communicable diseases. With specific regard to blood and blood components, the requirement for machine-readable information will aid in the control of units that are at risk of spreading communicable diseases.

After the effective date of any final rule, if a product required by the final rule to bear a bar code does not have such a bar code, the product may be considered adulterated or misbranded under the act and would be subject to

regulatory action. Our enforcement actions under the act include, but are not limited to, seizure, injunction, and prosecution, and violation may result in withdrawal of approval of a product's marketing application.

IV. Environmental Impact

We have determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

A. What Is the Estimated Information Collection Burden?

This final rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe the provisions below in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Bar Code Label Requirement for Human Drug and Biological Products

Description: We are issuing a new rule that would require human drug product and biological product labels to have bar codes. The rule requires bar codes on most human prescription drug products and on OTC drug products that are dispensed pursuant to an order and commonly used in health care facilities. The rule also requires machine-readable information on blood and blood components. For human prescription drug products and OTC drug products that are dispensed pursuant to an order and commonly used in health care facilities, the bar code would contain the NDC number for the product. For blood and blood components, the rule specifies the minimum contents of the machine-readable information in a format approved by the CBER Director as blood centers have generally agreed upon the information to be encoded on the label. The rule will help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time.

Because bar code information for drugs subject to an NDA or ANDA will be reported through an annual report, this rule affects the reporting burden associated with 21 CFR 314.81(b)(2)(iii). Section 314.81(b)(2)(iii) requires the submission of an annual report containing a representative sample of package labels and a summary of labeling changes (or, if no changes have been made, a statement to that effect) since the previous report. Here, the bar code would result in a labeling change. We have previously estimated the reporting burden for submitting labels as currently required under § 314.81(b)(2)(iii), and OMB has approved the collection of information until March 31, 2005, under OMB control number 0910–0001. We are not re-estimating these approved burdens in this rulemaking; we are only estimating the additional reporting burdens associated with the submission of label changes under § 314.81(b)(2)(iii).

Minor label changes for blood and blood components may be reported as part of an annual report, as described in 21 CFR 601.12(f)(3), and we would consider the machine-readable information on blood and blood component labels to be a minor change. We have previously estimated the reporting burden for submitting labels as currently required under § 601.12(f)(3), and OMB has approved the collection of information until August 31, 2005, under OMB control number 0910–0338. We are not re-estimating these approved burdens in this rulemaking; we are only estimating the additional reporting burdens associated with the submission of label changes under § 601.12(f)(3).

Parties may also seek an exemption from the bar code requirement under certain, limited circumstances. Section 201.25(d) requires submission of a written request for an exemption and describes the contents of such requests.

Description of Respondents: Manufacturers, repackers, relabelers, and private label distributors of prescription drug products, including biological products, or OTC drugs that are dispensed pursuant to an order and commonly used in hospitals.

We estimate the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
201.25 and 610.67	1,447	31.1	45,000	24 hours	1,080,000
§ 201.25(d)	40	1	40	24 hours	960
314.81(b)(2)(iii)	1,447	5.9	8,576	10.5 minutes	1,497
601.12(f)(3)	211	1	211	1 minute	3.5
606.121(c)(13)	981	42,507.7	41.7 million	1 minute	695,000
Total					1,777,550.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following assumptions:

- For prescription drugs whose label changes would be reported in an annual report pursuant to § 314.81 or § 601.12(f)(3) for biological products), there are approximately 1,447 registered establishments that would be reporting. Information on listed drugs indicates there are 89,800 separate, identifiable product packages that will comply with the bar code requirement. These packages account for 8,576 separate and distinct products (each product is marketed in an average of 10.47 packaging variations). This means that the annual frequency of reports would be 5.9 (8,576 products subject to annual

reports/1,453 registered establishments = 5.92 products per registered establishment, which we have rounded down to 5.9). Section 314.81(b)(2)(iii) requires firms to submit an annual report that includes a summary of any changes in labeling since the last annual report. Similarly, § 601.12(f)(3)(i)(A) requires manufacturers of biologics to include in their annual reports editorial or similar minor labeling changes. We expect that the addition of a bar code to a label would necessitate a simple statement in the annual report declaring that the bar code has been added, so we have assigned an estimate of one minute for such statements per label. Each product's annual report would include labels for all packaging variations. Thus, the total reporting burden would be 1,496.67 hours ((8,576 reports x 10.47 labels (or one label per packaging variation) per report x 1 minute per report)/60 minutes per hour = 1,496.67 hours), which we have rounded up to 1,497 hours.

- For minor labeling changes for blood and blood components included in an annual report under § 601.12(f)(3)(i)(A), FDA's database indicates there are 211 licensed manufacturers of transfusable blood and blood components. We expect that the addition of machine-readable information to the label of blood and blood components would necessitate a simple statement in the annual report declaring that the machine-readable information has been added, so we have assigned an estimate of one minute for such statements. Thus, the total reporting burden would be 3.5 hours ((211 reports x 1 minute per report)/60 minutes per hour = 3.516 hours), which we have rounded down to 3.5 hours.
- For the requirement in § 601.121(c)(13) to include machine-readable information on blood and blood components, FDA's registration database indicates there are 981 blood and plasma establishments. The AABB estimates that approximately 13.9 million blood donations are collected annually. We estimate that each blood donation yields approximately three blood components. This means that the frequency of responses is approximately 41.7 million occurrences (13.9 million blood donations x 3 blood components per donation) divided by 981 establishments or 42,507.645 occurrences per establishment, which we have rounded up to 42,507.7. We estimate that it takes one minute to apply a machine-readable code manually; if a blood collection facility uses an on-demand printer, the time would range between 15–30 seconds. For purposes of this estimate, we adopt the larger time estimate of one minute per machine-readable information for blood, thus resulting in an annual reporting burden of 695,000 hours ((41.7 million reports x 1 minute per report) /60 minutes per hour = 695,000 hours). However, we reiterate that facilities using on-demand printers would face lower burdens. In addition, blood collection centers are currently allowed and encouraged to apply machine-readable information to collections. This burden estimate accounts for requiring an activity that is currently voluntary and does not reflect an additional activity.
- For exemption requests under § 201.25(d), we believe that few products would warrant an exemption from the bar code requirement. Consequently, based on our experience with other exemption provisions, we estimate that there may be 40 exemption requests per year and that each exemption request will require 24 hours to complete. This should result in an annual reporting burden of 960 hours (40 requests per year x 24 hours per request = 960 hours).

B. What Comments Did We Receive on Our Estimates?

Several comments disagreed with our estimates, and one comment even disagreed that the rule would have practical utility insofar as its products were concerned.

(Comment 74) Specifically, two comments from allergenic extract firms disagreed with our claim that reporting label changes would take only 1 minute. One comment claimed that the estimate would be 400 hours for its firm, based on 15 minutes per label report and 30 product labels per report. It declared the burden to be "onerous and unnecessary." The comment declared that the rule would not enhance our oversight of the allergenic extract industry and would not reduce medication errors because allergenic extracts are administered in physician's offices and clinics where "mistakes do not normally occur." The second comment stated that its firm would have to submit label changes for 1,200 labels and 1,200 packages at 10 minutes per report, for a total burden of over 400 hours, and declared this would be an "unnecessary hardship" on a small firm.

(Response) The final rule exempts allergenic extracts from the bar code requirement, so the comments' claims are moot. However, we reiterate that we expect that the addition of a bar code to a label would necessitate only a simple statement in the annual report, which is already a required document (see 68 FR 12516; 21 CFR 314.81). This statement would simply declare that the bar code has been added to the label. So, for example, if the statement in the annual report was, "We added a bar code to the label pursuant to 21 CFR 201.25," it is difficult to see why such a statement requires 10 or 15 minutes to prepare or insert into an annual report, and even more difficult to see why such a statement results in a 400-hour burden for a firm. The comments did not explain how it arrived at its estimate of 10 and 15 minutes per report, so, because we have no basis to evaluate the accuracy of the comments' larger time estimates, we decline to adopt them.

(Comment 75) One comment from a medical gas firm said that we underestimated the number of firms subject to the rule. The comment said that there are over 3,000 medical gas sites alone.

(Response) Our estimate was based on the number of firms that have registered with FDA, and one should remember that the final rule applies to manufacturers, repackers, relabelers, and private label distributors who are subject to the drug establishment registration requirements (see § 201.25(a)). We do not know whether the comment's claim of over 3,000 medical gas "sites" includes firms that are not subject to our drug establishment registration requirements, but if a firm is not subject to the drug establishment registration requirement, then it would not be subject to the bar code requirement.

Yet, even if we were to accept the comment's estimate of 3,000 medical gas establishments and assumed that all were subject to the drug establishment registration requirements, we do not need to change our Paperwork Reduction Act estimates because the final rule exempts medical gases from the bar code requirement.

The information collection provisions in this final rule have been approved byOMB. (OMB control number: 0910–0537; expiration date 2/28/07).

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.

VI. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

A. Introduction

We have examined the rule under Executive Order 12866, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, and the Congressional Review Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, distributive impacts and equity). Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act), if a regulation has a significant economic impact on a substantial number of small entities, we must analyze regulatory options that would minimize the impact on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any regulation that may result in expenditure by State, local, and tribal governments, or by the private sector of $100 million in any one year (adjusted annually for inflation). Currently, such a statement is required if costs exceed about $110 million for any one year. The Congressional Review Act requires that regulations determined to be major must be submitted to Congress before taking effect.

The regulation is consistent with the principles set forth in Executive Order 12866 and the three statutes. We have identified the regulation as an economically significant regulatory action, as defined in Executive Order 12866. We believe the regulation is unlikely to have a significant impact on a substantial number of small entities. The expected impact of this regulation is greater than $110 million in a single year and therefore is considered a major regulatory action as defined by the Unfunded Mandates Reform Act. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined this regulation to be major under the Congressional Review Act.

We estimate that the rule provides net benefits to society of $3.4 billion to $3.6 billion annually, depending on whether a discount rate of 3 percent or 7 percent is used. This estimate relies on work by the Eastern Research Group, Inc. (ERG), which we contracted to collect data, interview industry experts, and analyze the costs and benefits of the rule. The detailed analysis and references in support of the impacts summarized in Table 2 is included in the docket as Reference 46 and is available on FDA's Web site. In section VII.O below, we present our analysis of the substantial uncertainty in the estimates presented in Table 2.

TABLE 2.—ESTIMATED IMPACTS OF THE FINAL RULE IN MILLIONS OF DOLLARS ANNUALIZED OVER 20 YEARS

Discount Rate	Regulatory Costs	Anticipated Hospital Costs*	Societal Benefits**	Net Benefits (benefits minus costs)	Potential Hospital Efficiencies***
7 Percent	$8	$660	$5,200	$4,500	$380 to $600
3 Percent	$7	$600	$4,900	$4,300	$360 to $570

Note: These estimates may not sum because of rounding.
*Costs due to voluntary accelerated purchase and utilization of bar coding systems
**Benefits to public health due to avoidance of adverse drug events
***Potential additional benefits from efficiencies in reports, records, inventory, and other hospital activities.

Table 2 presents the total expected regulatory costs to manufacturers, repackers, relabelers, retail outlets, and FDA. Most of these costs will occur during the first several years after implementation. Table 2 also shows the estimated opportunity costs of the expected accelerated investment in bar coding systems by the hospitals. These investment expenditures are necessary to achieve the societal benefits expected from the rule. Table 2 also shows our estimated range of possible efficiencies in hospital activities associated with accelerated adoption of technology. Both anticipated hospital costs and the societal benefits would occur after hospitals purchase and install the necessary equipment to take advantage of bar codes. The net benefit of the rule is the societal benefit minus the induced expenditures minus the regulatory costs. The net benefits of the rule, which are $3.6 billion and $3.4 billion per year if annualized at 7 percent and at 3 percent, are $38 billion and $51 billion in present value terms, if calculated at 7 percent and 3 percent discount rates respectively. These estimates, however, account for neither expected potential hospital efficiencies, nor income transfers following fewer awards for medical malpractice.

While efficiency gains in hospital recordkeeping and reporting procedures produce societal benefits, we are extremely uncertain that hospitals would make the additional investments to achieve them. This final rule focuses on the use of bar code technology only in hospital pharmacies and patient care wards. Such systems could provide the opportunity and incentive for hospitals to expand bar code technology into other areas of operation, such as billing or supply ordering. The installation of bedside systems may make such an expansion more likely, but we believe it would not be a direct effect of this final rule. In addition, the estimated efficiency gains are extremely uncertain. However, we have noted the potential of these additional gains, but have not claimed them as direct benefits of this final rule.

We also note that reductions in income transfers from the potential reduction in medical malpractice awards and reductions in medical liability insurance that may occur with reductions in adverse drug events are not considered societal benefits because they do not represent resource or opportunity savings. These effects are discussed later in this section, but do not contribute to the estimated net benefits shown in Table 3.

B. Objective of the Rule

The objective of the rule is to enable the health care sector to utilize technological solutions to reduce preventable adverse drug events (ADEs)[1] and acute hemolytic

[1] For this analysis an adverse drug event (ADE) is an injury from a medicine (or a lack of an intended medicine) (source: American Society of

Continued

transfusion reactions (AHTRs) associated with medication errors[2] and transfusion errors in hospitals.[3]

C. Estimate of Preventable Adverse Drug Events and Acute Hemolytic Transfusion Reactions

In 1999, the Institute of Medicine (IOM) issued a report that drew public attention to the number of deaths that occur each year in the United States from preventable medication errors in hospitals. A significant proportion of the reported deaths, as well as the additional illnesses and morbidities, were associated with errors involving FDA-regulated products, especially medications. This section briefly describes our efforts to estimate the current number of preventable ADEs and AHTRs.

The public health literature includes many attempts to determine the rate of preventable ADEs in United States hospitals, although these studies typically employed varying methodologies and definitions. Our methodology begins by multiplying estimated hospital admissions by reported rates of ADEs per admission. We combined the resulting number of ADEs per hospital per year with the reported ratio of preventable to total ADEs to estimate the number of preventable ADEs per hospital per year. We first developed these calculations for various hospital size classes and then aggregated the data to present national estimates. We relied on published literature to derive ADE rates for each major stage of the medication process in hospitals. We then projected preventable ADEs for the entire evaluation period based on expected future increases in hospital admissions.

We used a similar methodology to estimate preventable AHTRs.

ERG identified four comparable published studies that reported rates of ADEs per hospital admissions (Refs. 2 to 5). The reported incidence rates of hospital admissions with ADEs ranged from 2.4 percent to 6.5 percent with a mean rate of 4.3 percent. According to AHRQ, there were 29.1 million non-obstetric hospital admissions during 2000 [4]. We multiplied these admissions by 0.043 and found that approximately 1.25 million ADEs occur annually in United States hospitals. The same four studies reported that between 15 percent and 49 percent of all ADEs are preventable. We used the mean of these studies to estimate that about 373,000 (30 percent) of these ADEs were preventable. Based on published reports (Refs. 2 and 6), we also estimated that 1,048,000 potential ADEs[5] are either intercepted before reaching the patient or do not cause an injury. According to projected increases in hospital expenditures and population demographics that imply future increases in hospital admissions, the annual number of preventable ADEs would total 478,000 within 20 years.

ERG searched the public health literature to identify stages in the hospital medication process in which errors occur and concluded that the medication stages of prescribing, transcribing, dispensing, and administration provide a useful analytic structure. The most common reported ADE symptom was cardiac arrhythmia followed by itching and/or nausea. Relatively few fatalities have been documented as preventable ADEs, but several published studies conclude that 2.8 percent of all preventable ADEs probably result in fatalities. Another study has asserted that as many as 2.7 percent of all "negligent" (as defined in the study) ADEs resulted in permanent disability. We used these estimates in our analysis.

AHTRs resulting from erroneous blood transfusions have been extensively studied and widely reported. Based on data provided by the National Blood Data Resource Center (NBDRC), ERG estimated that United States hospitals currently transfuse approximately 15.7 million units of whole blood and red blood cells to 5.2 million patients per year. According to recent studies (Ref. 27) the frequency of erroneous ABO-incompatible transfusion errors is approximately 1 per 38,000, or 414 errors per year. Another study (Ref. 7) has estimated that two-thirds of all incompatible transfusions were the result of preventable errors. Using this figure, the current number of annual preventable erroneous blood transfusions that result in AHTRs is 276. In addition, the literature reports that potential blood transfusions that could have resulted in adverse outcomes but did not account have a frequency five times actual errors (Ref. 8). Thus, we have estimated 276 preventable and 1,380 potential AHTRs occur in hospitals each year. The NBDRC has estimated an annual growth rate of transfusions of 6 percent. Discussions with hospital personnel believe this may be an overestimate, so we have used a 3 percent annual growth in transfusions to forecast preventable AHTRs over time. Therefore, within 20 years we expect 498 preventable and 2,492 potential AHTRs in the absence of this regulation.

D. The Final Rule

With certain exceptions, we are requiring linear bar codes on almost all prescription drug and biological products (including vaccines) and all over-the-counter (OTC) drug products commonly used in hospitals and dispensed pursuant to an order. We are also requiring the use of machine-readable information on all human blood and blood components intended for transfusion. For drug products, this information will include National Drug Code (NDC) number identifying the dosage, strength, nature, and form of each administered product and be portrayed in a linear bar code[6] and include product-specific and package-specific NDC numbers. We will maintain a database of all unique NDC numbers and ensure these data are available for use in commercial computerized systems that can provide bedside bar code identification. The bar code requirement would be effective within 2 years. For blood and blood components, the machine-readable information will include information identifying the facility, the lot number relating to the donor, a product code, blood type, and Rh.

We are issuing this rule because private markets have failed to establish the standardized bar codes that are needed to motivate hospitals to adopt an important health-saving technology. In particular, we believe that the private market's failure to develop standardized bar codes has impeded the growth of the technological investment necessary to

Hospital Pharmacists, 1998). The definition used for the analysis in the proposed rule included AHTRs, which are shown separately for the final rule's analysis.

[2] For this analysis a medication error is a preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the health care professional, patient, or consumer (source: NCCMERP, 2002).

[3] For this analysis a hospital is a facility that provides medical, diagnostic and treatment services that include physician, nursing and other health services to inpatients and the specialized accommodation services required by inpatients (source: NAICS, 2002). We have excluded psychiatric, alcohol and chemical dependency, rehabilitation, and other specialty hospitals. We have included general medical and surgical hospitals in which the average stay is less than 30 days.

[4] Obstetric admissions are rarely associated with ADEs. The referenced articles have eliminated these admissions in their analyses. Reasons for the low probability of ADEs include the relatively healthy state of most admissions as well as the low number of medications.

[5] A potential ADE is a medication error that could have caused an ADE, but did not. Potential ADEs include medication errors that were intercepted before reaching the patient. Potential ADEs include any errors that do not involve patients.

[6] A bar code is a graphic representation, in the form of bars and spaces of varying width of numeric or alphanumeric data.

reduce the number of ADEs and AHTRs in the nation's hospitals. We find that a regulatory intervention to establish a standardized system of bar codes is needed to address this market failure.

The final rule will increase costs to the manufacturers, repackers, relabelers, and private label distributors of the affected products by requiring changes in manufacturing, packaging, and labeling processes. It will also increase costs to some hospitals by requiring a change in some bar code readers associated with these products. The final rule will also require FDA resources to ensure industry compliance with the bar coding requirement and additional resources to maintain a computerized database of NDC numbers. Once bar codes are standardized, the final rule will enable hospitals to take advantage of the coded information that would permit hospitals to reduce ADEs, while achieving other operational cost efficiencies. The final rule will also enable other sectors to use machine-readable technology in ways that would benefit public health (for example, accessing up to date labeling information from home computers or identifying drugs subject to recalls).

E. Description of Affected Sectors

1. Current Machine-Readable Technologies

Prior to developing the rule, we contracted with ERG to examine the current machine-readable technologies available for use by the health care sector and report on trends. The resulting report is included in the docket (Ref. 9), and summarized here.

Bar coding is currently the most widely used machine-readable technology and is also the technology most likely to see increased acceptance in the near future. Health care companies have sponsored two organizations that have each developed different bar code symbologies;[7] the Uniform Code Council's Universal Product Code (UPC) and the Health Industry Business Communication Council's Health Industry Bar Code (HIBCC). UPC codes are more widely used in retail stores while HIBCC is specially designed to safeguard against errors. However, although HIBCC codes have been effectively used in the medical device industry, they have not won wide acceptance within pharmaceutical markets. Within these symbologies, the groups have defined acceptable linear (or one-dimensional) codes, two-dimensional codes, and composite codes (a combination of one- and two-dimensional symbologies). The advantage of two-dimensional and composite codes is that they can include additional information in the same area. Potential disadvantages of two-dimensional and composite symbologies are the higher costs for readers and scanners and the additional risk of uncertain data recovery by misinterpreting coded information.

While these organizations' bar codes are widely used, their use for the prevention of ADEs remains limited. Most pharmaceutical and OTC manufacturers use bar codes to move shipping cases through their distribution chain, but relatively few pharmaceuticals are sold with the specific bar codes required by this rule. Some hospitals use computer-controlled technology to add their own bar codes to incoming products.

Bar code systems require printers, scanners, and software to ensure that correct information is communicated. According to discussions with consultants, pharmaceutical manufacturers prefer to label products as late as possible in the manufacturing process in order to maximize flexibility. Printing technology advancements have allowed more printing options to be available. Manufacturers currently use contract label printers or packagers along with in-house operations. Contract printers are commonly used for preprinted labels that do not carry customized data. Currently, ink jet and thermal printers may be appropriate for production line printing of bar codes, although ink jet printers may cause difficulties in media compatibility, print speed, and resolution. Water-based inks can streak or blur, but non-water soluble inks produce a shine that reflects to the scanner and affects how the bar code is read. Laser printers are subject to toner flaking, which makes them unreliable for long-term bar code printing. Production line speeds may also create problems for bar code resolution levels.

The complexities of bar code scanners have evolved as the codes have become more data intensive. Most scanners in current use are laser-based systems designed to read linear bar codes. In health care settings, scanners are routinely programmed to discriminate among the symbologies they are likely to encounter. Some laser scanners can also read composite or two-dimensional codes, if properly programmed. These scanners are more costly, and some consultants have cautioned that multiple data systems may introduce potential misreading at hospital bedsides. Moreover, in certain situations, health care scanners may not need to use all of the available information. For example, scanners at bedside point of care may only need to capture limited identifying information while the central dispensing pharmacies may require full database capabilities. At this time, the scanning industry is confident that linear standards[8] will be readily accessible, whereas other standards may require additional market research. We believe that scanners will work in conjunction with hand-held personal digital assistants (PDAs) in hospital wards due to their portability and multi-functional characteristics.

2. Manufacturers and Packagers of Affected Products

A large majority of exterior pharmaceutical packages already include the NDC number in a bar code, according to discussions with staff at two large Veteran Health Administration Comprehensive Mail Order Pharmacies. The final rule, however, by requiring this bar coded information on the drug's label, may result in a bar code on both exterior and interior packaging. In addition, some prescription and OTC drug products are already sold in blister packs, where individual pills or capsules are enclosed in a bubble. Prescription products are often repackaged into blister cards for more convenient use in hospitals. While some blister cards may now be labeled with bar codes for specified concerns, many are not. OTC drug products in blister packs rarely have bar coded information. Moreover, many bar coded exterior packages cannot be read by hospital or retail scanners, because manufacturers use bar codes for sales promotions and other special offers that have separate and distinct NDC numbers that do not appear in all customer databases.

There are currently about 1,218 establishments in the Pharmaceutical and Biologic Preparation industries (NAICS 325412 and 325414). Based on the size distribution of industry establishments, we estimate a total of about 3,513 in-house packaging production lines. In addition, an estimated 229 establishments in the Packaging and Labeling Services industry (NAICS 561910) are dedicated to serving the pharmaceutical industry, accounting for an additional 482 packaging lines. Overall, we estimate that 3,995 packaging lines are used in 1,447 establishments for these products.

In addition, we estimate there are 981 blood collection centers in the United States (NAICS 621991). Each of these collection centers acts as a separate

[7] A symbology refers to a distinct technological, machine-readable language.

[8] A standard refers to a general description of a system of machine-readable languages.

packaging line. Consultants have estimated that about 25 percent of these blood collection centers are included in published industry counts. We added blood collection centers to the industry packaging lines for a total of 4,976 affected packaging lines in 2,428 separate establishments.

The number of separate trade and generic named affected products is about 17,000, an increase greater than 500 percent since 1990. Each of these named products may be marketed in varying strengths or dosage forms. Using data from the current NDC number list, we have estimated there are 78,000 separate prescription unit-of-sale packages, 98,000 OTC drug packages, and 2,000 blood/vaccine packages. Over time, the number of distinct packaging units is expected to continue to increase. The OTC drug industry has suggested that as many as 10 percent of OTC packages (9,800 packages) are commonly used in hospital settings and would be subject to the bar code rule. For example, OTC analgesics that may be dispensed to a patient pursuant to an order would be subject to the final rule, but shampoos or toothpastes that may be provided would not. The Consumer Healthcare Products Association (CHPA) estimated that as many as 10 percent of their member's products were regularly dispensed from hospital pharmacies or packaged specifically for sale to hospitals. Other responses include a report from a hospital that only 200 OTC products are routinely dispensed. However, discussions with OTC manufacturers and hospital pharmacists have indicated larger potential coverage. Hospital pharmacists periodically order wide arrays of products from catalogs. While some categories of OTC products are unlikely to be affected by the regulation, ERG has estimated that as many as 75 percent of OTC shelf-keeping units (SKUs) could potentially be used in hospitals and subject to the requirement of this regulation. For purposes of this analysis, because we do not know the specific SKUs that will be "commonly used in hospitals," we have assumed that 75 percent of all OTC drug products (73,500 SKUs) would be required to provide bar coded information. Overall, 153,500 separate unit-of-sale packages are expected to be subject to the final rule.

OTC drug manufacturers frequently redesign labels. Based on discussions with manufacturers, the majority of OTC labels are redesigned within a 6-year cycle for marketing reasons. Many products have redesigned labels every 2 or 3 years. Prescription drug product labels may be redesigned less frequently, but there is evidence that numerous labeling changes occur. We examined selected NDA files and found that changes to prescription drug product labels occur, on average, more than once per year. While marketing of prescription drug products may not be as sensitive to labeling graphics and package design as OTC products, there are many other reasons why manufacturers change their product labels. For this analysis, we have nevertheless assumed that the final rule will result in significant involuntary relabeling by the industry.

3. Retail Outlets

Retail pharmacies currently have the capability to read linear standardized bar codes at their in-house scanners. According to the National Association of Chain Drug Stores, there are 55,000 community and chain pharmacies (NAICS 446110), and pharmacies in supermarkets and mass merchandisers (NAICS 445110) that utilize over 515,000 scanners. The expected useful life of a retail scanner is 5 years.

The current stock of scanners in retail outlets may require upgrades or replacement if the bar code rule were to mandate reduced space symbology (RSS). These upgrades would not be a direct requirement of the alternative, but would have been necessary for these entities to continue with bar coded activity. The retail sector currently relies on UPC or other symbologies and adopting such a standard would not require scanner replacements or upgrades. The final rule covers only those OTC drug products commonly used in hospitals and dispensed pursuant to an order. Although small vials or bottles may require specific RSS symbology, these items are available to consumers in larger packages that accommodate current standards for retail outlets. The regulation is not expected to impact this sector, but, in developing this rule, we have considered alternatives that would affect retail outlets.

4. Hospitals

The final rule does not require hospitals to introduce the new automated technologies, but the development of consistent bar codes on drugs and consistent machine-readable information on blood and blood components will greatly encourage hospitals to implement bar code based systems to reduce ADEs associated with medication errors. Moreover, unit-dose blister packs and other vials and small bottles would probably need bar codes using the RSS symbology. In order to properly scan these products, hospitals that currently have installed bar code readers would have to upgrade or replace some scanners. According data from the National Center for Health Statistics (NCHS), there are 5,040 hospitals in the United States (NAICS 622) with a total of about 850,000 beds that will be likely to use bar code technology. Estimates of personnel in these hospitals include 48,500 pharmacists, 44,500 pharmacy assistants, and almost 1.2 million nurses. Overall, a nurse is responsible for 3 beds per shift. An average hospital includes 170 beds and employs about 10 pharmacists, 9 pharmacy assistants, and 237 nurses.

Hospitals are currently adopting bar code technology to better control the entire medication process and improve the delivery of care to patients. Virtually all hospital pharmacies use bar code scanners for inventory and stock keeping activities, but only approximately 1 percent of all hospitals have installed bedside, point-of-care systems that use bar coded information. An additional 3 percent of hospitals use some form of computerized system in the medication process, but not all use bar codes. Overall, an estimated 2 percent of all hospitals (101 hospitals) currently use bar codes in everyday operations. Even in the absence of the regulation, we expect the remaining 4,939 hospitals to gradually implement computerized tracking systems. Discussions with industry consultants and the American Hospital Association (AHA), however, suggest that without standardization, hospitals would need an estimated 20 years to adopt and use systems with bar code readers and to use in-house overpackaging and self-generation of bar code identifiers. ERG discussed with several consultants whether 20 years is a realistic horizon for acceptance of this technology. While they recognized the uncertainty of future projections in this area, industry experts felt that 20 years was not an unreasonable expectation. We examined the impact of alternative future acceptance rates as a sensitivity analysis.

We requested comments on the potential uses of bar code information on drug products at a public meeting held on July 26, 2002. Comments from that public meeting indicated that while patient safety reasons were the primary goals for installation of scanning systems, there are other potential uses. Industry groups and individual hospitals noted that installation of scanning systems may lead to more efficient inventory control, purchasing and supply utilization, and other potential risk management activities.

Other groups noted that an integrated computerized network would assist billing and laboratory systems as well. The AHA stated that bar codes would improve patient care and safety, increase workforce productivity and satisfaction, streamline payment, billing, and administrative systems, lead to efficient management of assets and resources, and meet consumer expectations for service and access to information. We believe these comments indicate that internal investment decisions concerning the acquisition of computerized systems entail additional returns that are in addition to ADE and AHTR avoidance. While some of these returns to hospitals (such as reduced liability awards and malpractice liability insurance premiums) may be partly transfers, we believe such additional efficiencies are likely.

5. Nursing Homes and Long-Term Care Facilities

We analyzed the potential impact of bar code technology for the prevention of preventable ADEs in nursing homes and other long-term care facilities (NAICS 623110). According to the American Health Care Association (AHCA), there are 16,456 nursing homes in the United States, 11 percent of which are hospital-based. These facilities account for about 1.8 million beds with an occupancy rate of over 85 percent. The AHCA estimates there are 561.7 million patient-days in nursing homes each year, with 1.5 million annual admissions. Most nursing homes are serviced by long-term care (LTC) pharmacies. There are approximately 3,000 of these pharmacies, including those that only service nursing homes.

6. FDA Oversight and Responsibilities

We would be affected in three areas. For successful bar code use, hospitals need access to the unique NDC numbers that identify specific active ingredients, packages, dosage forms, and units. We would maintain the database containing these unique identifiers and arrange access to it for the private sector.

We would also develop and maintain a process of reviewing and granting exemptions to these regulatory requirements for specific products. Although we estimate that we will receive approximately 40 annual exemption requests, we cannot accurately predict the resources required to process these exemption requests.

The third area in which our activities would be impacted by the final rule would be our use of compliance resources. The final rule requires affected products to have bar coded information (or machine-readable information in the case of blood and blood components). Although the exact impact on our compliance resources is not quantified, we recognize that the creation of new regulatory requirements will need additional resources to ensure compliance.

F. Regulatory Costs of the Final Rule

1. Introduction

We estimated costs for a 20-year evaluation period to reflect the time that hospitals would take to invest in bar code technology in the absence of the regulation. This summary describes these costs and presents both the present value (PV) and the annualized value of the cost streams. We analyzed costs to the affected sectors over the entire evaluation period using both 7 percent and 3 percent annual discount rates. We assume that costs and expenditures accrue at the beginning of each year. The detailed calculations and references that support the following analysis are available as Reference 1.

2. Costs to Manufacturers and Packagers of Affected Products

The pharmaceutical industry would face compliance costs from this regulation, because we would require manufacturers, repackers, relabelers, and private label distributors to include NDC numbers in bar code format, using linear bar code symbology for all unit of dosing products. The final rule requires this information within 2 years of the implementation date. The final rule also affects the production processes of the pharmaceutical and biological product industries. Although manufacturers appear to initiate labeling changes fairly often for internal purposes, the final rule could lead to large-scale production line alterations that could affect a manufacturer's entire product line.

a. *Prescription drugs.* Based on ERG's analysis, we expect the overall investment costs to the prescription drug industry to total $28.1 million over the first 2 years of the evaluation period. Among the major components of these investment costs are $17.4 million resulting from modifications of unit-dose interior packaging to include a unique NDC number in a linear bar code format for every product. Exterior packaging modifications that include NDC information would cost $6.1 million over the 2-year period. Because the capital equipment installed for these packaging modifications would require upgrading and replacement after an average 10 years of productive life, the industry would invest an additional $4.7 million over the 11th and 12th evaluation years for this replacement and upgrade. In addition, the packaging production process would result in additional annual operating and maintenance costs reaching $0.4 million by the second evaluation year. In total, we estimate that the costs incurred by the prescription drug manufacturers, repackers, and relabelers to comply with the final rule over the 20-year period would be $3.2 million per year if annualized using a 7 percent annual discount rate, and $2.5 million if annualized using a 3 percent discount rate.

b. *Over-the-Counter drugs.* The OTC drug industry has estimated that fewer than 10 percent of their products are commonly used in hospitals (CHPA, 2002). However, suppliers and hospitals have asserted that as many as 75 percent of OTC SKUs would at least occasionally be ordered for hospitals. For this analysis, we assume that 75 percent of all OTC drug products could be required by the rule to include bar coded NDC numbers. It is likely the industry would either assign internal production processes that could allow labeling differentiation for these products, or repackers and relabelers would provide the required labeling. We believe that the packaging changes required to install bar coding equipment are so large they would result in manufacturer decisions to bar code entire product lines rather than incremental, specific products. We estimate that the initial investment for OTC drug manufacturers, repackers, and relabelers would total $19.9 million over 2 years, with additional capital investments of $1.5 million during the 11th and 12th evaluation years. The estimated annual operating costs to provide bar codes to the affected proportion of the OTC drug market are expected to reach $0.3 million by the second year. Overall, the estimated annualized costs to the OTC drug industry, using a 7 percent annual discount rate over the 20-year evaluation period, are $2.2 million. With a 3 percent annual discount rate, the annualized costs to OTC manufacturing firms are $1.6 million.

c. *Blood and blood components intended for transfusion.* Manufacturers of blood and blood components intended for transfusion could also be minimally affected by the rule, but we could not identify a manufacturer of blood and blood components intended for transfusion that does not currently apply bar coded information that includes information required by this final rule. The final rule does not specify a particular bar code standard

for this market segment. Therefore, we do not believe this final rule will pose any incremental costs to this industry.

d. *Total cost to manufactures, repackers, relabelers, and private label distributors.* The annualized costs to manufacturers, repackers, relabelers, and private label distributors of prescription products, OTC products, and human blood and blood components are $5.4 million using a 7 percent discount rate. Using a 3 percent discount rate, the annualized costs to manufacturers, repackers, relabelers, and private label distributors are $4.1 million.

3. Costs to Retailers and Distributors

We do not expect increased costs to retailers, wholesalers, and distributors. Currently installed scanners and readers are able to read the proposed linear standard bar codes. However, if we issued an alternative regulation requiring specific RSS symbology, independent community pharmacies, chain pharmacies, and pharmacies in chain merchandisers or supermarkets would have had to upgrade scanners in order to take advantage of the proposed standardized information. Given the widespread reliance on bar code information in the retail sector, the currently installed stock of bar code scanners will not be affected by the rule.

4. Costs to Hospitals

The final rule requires NDC numbers in linear bar codes on the labels of the affected products. However, because we expect that manufacturers, repackers, relabelers, and private label distributors may find it necessary to use RSS symbology on small unit-dose packages or vials and bottles, hospital scanners and readers must have the ability to capture this information in RSS format. As a result, in order for hospitals with currently installed bar code reading systems to maintain current operating practice, some scanners must be replaced with scanners that are RSS-capable. Replacement of these scanners is necessary to maintain current operations.

These costs are somewhat mitigated for the approximately 2 percent of all hospitals (101 hospitals) that currently utilize bar codes in everyday practice by repackaging medications in unit-dose form and applying internally printed and generated bar codes. According to published reports and discussions with industry experts, ERG estimated that such hospitals now incur costs to repackage and apply bar codes to about 95percent of dispensed medications. These 101 hospitals would avoid some of these expenditures (because 25 percent of all medications will have useable bar codes) under the rule.

The final rule would result in the premature replacement of scanners used in hospital pharmacies and treatment wards. ERG has estimated that the annualized, incremental costs to hospitals of accelerating scanner replacement or upgrades to read RSS symbology is $0.8 million (at a 7 percent discount rate) or $0.6 million (at a 3 percent discount rate).

According to literature reports, it costs as much as $0.03 per unit-dose to apply a bar code in hospital pharmacies. Currently, 25 percent of dispensed medication must have bar codes applied by in-house pharmacy in unit-of-use packages. Avoidance of this activity under the final rule will reduce costs by about $0.2 million per year.

Overall, we estimate the average annualized costs of the final rule less the cost savings to hospitals to be $0.6 million using a 7 percent annual discount rate and $0.4 million using a 3 percent annual discount rate.

5. Costs to the Food and Drug Administration

According to a recent study, the number of available pharmaceutical products has increased by 500 percent in 10 years and now totals over 17,000 separate trade and generic names. With the multitude of dose strengths and packages, the total number of unique packaging units is now 178,000 separate identifiable products. Of this total, we expect 153,500 of these packaging units to require bar coded NDC numbers because we estimate that 75 percent of all OTC drug products will be affected. Even if the recent growth rate in new products were halved (so that the number of available products increased by 500 percent in 20 years), there would be 890,000 new NDC codes over 20 years, or 44,500 per year for the evaluation period.

We expect that the requirement for notification of unique NDC numbers would require the development and maintenance of an accessible agency database. We have assumed 0.5 hours per notification to represent the cost to input and encode a specific NDC number and to maintain an accessible database containing all NDC numbers. This implies an annual resource requirement of 22,250 hours, or approximately 10 full-time equivalents (FTEs). These direct resources require supervision, administration, and support. To account for these indirect resources, we multiplied direct resources by 2, resulting in 20 annual FTEs. The most recent FDA budget documents have used a value of approximately $120,000 per FTE. Therefore, we expect the annual costs of maintaining a system of unique NDC numbers to be $2.4 million. Although additional regulatory requirements, such as developing and operating a exemption waiver process or requiring readable bar code information on product labels, would increase our administrative and compliance burdens, we have not quantified these impacts.

6. Total Regulatory Costs

The total direct annualized regulatory costs of the final regulation over the 20-year period amounts to $8.4 million using a 7 percent annual discount rate and $6.9 million using a 3 percent discount rate. These costs differ from the costs estimated for the proposed rule because of our analyses of the proportion of affected OTC drug products, the human blood and blood component industry, hospital responses to bar codes, and a 2-year implementation period. Table 3 shows future projections for the increased investments and operating and maintenance costs expected from the regulation.

TABLE 3.—REGULATORY COSTS BY YEAR IN MILLIONS

Evaluation Year	Investment During Year	Operating and Maintenance Cost
1	$32.6	$2.6
2	$24.0	$2.9
3	0	$2.9
4	0	$2.9

TABLE 3.—REGULATORY COSTS BY YEAR IN MILLIONS—Continued

Evaluation Year	Investment During Year	Operating and Maintenance Cost
5	0	$2.9
6	0	$2.9
7	0	$2.9
8	0	$2.9
9	0	$2.9
10	0	$2.9
11	$3.2	$2.9
12	$3.0	$2.9
13	0	$2.9
14	0	$2.9
15	0	$2.9
16	0	$2.9
17	0	$2.9
18	0	$2.9
19	0	$2.9
20	0	$2.9

G. Other Anticipated Expenditures

We anticipate that the final rule will affect facilities defined as hospitals and included in the NCHS report on Health 2002.[9] The final rule would impact hospitals (NAICS 622) by encouraging them to accelerate the efficient use of bar code reading technology in bedside point of care settings. The expected increased investment would lead to a significant reduction in the number of ADEs and AHTRs among hospital patients. We assume that hospital investments in this technology occur at the beginning of each year.

Hospitals have long considered the application of bar code reading technology for their facilities. According to the American Hospital Association (AHA), almost half of United States hospitals have explored the possibility of independently installing this technology. A few (about 4 percent of all United States hospitals) are currently using some form of computerized systems in their medication processes, and half of them use bar codes in everyday practice. However, because hospitals currently have no standardized bar coded information for all therapeutic products, each hospital must generate and internally affix bar codes that are applicable only within that specific facility. In some cases, hospitals overpackage drug products in order to make current scanning systems usable. This extra effort reduces the expected efficiency of the bar code reading systems, introduces potential errors, and has been a barrier to the general acceptance of readable technology. Standardized universal codes would remove this impediment and encourage health care facilities to invest and use technology to reduce patient ADEs and AHTRs.

Hospital facilities will face significant capital investments and significant process changes in order to implement bar code reading and scanning technology. ERG estimated that the average initial cost to a typical hospital for the installation of scanners, readers, software, initial training etc. is $448,000.[10] In addition, although there is considerable uncertainty, hospital industry executives and consultants contacted by ERG agree that negative productivity effects are likely after installation of a bar code reading system. These contacts noted that using scanners could result in reductions in patient ward productivity because current scanners and administration procedures would have to be revised to accommodate the technology. Difficulties could arise, for example, when multiple doses of medication are required at the same time for different patients; or when current administrative practices, such as pre-preparing certain medication, could not be accommodated with the bar code reading systems. Also, moving the scanner and reader from room to room, not adequately reading the bar code on one swipe, and other procedural changes might result in operational inefficiencies. It is possible (and hopeful) that long-term process changes would moderate or eliminate these potential inefficiencies. While some consultants believed that bar code systems would ultimately be resource neutral, the most detailed analysis of the VA system (Ref. 10) estimated a 10 percent loss of nursing productivity after implementing a bar code system. Our analysis assumes that hospital ward productivity levels would fall by 3 percent annually over the evaluation period. We examine the effects of alternative assumptions in section VII.O below. The annual opportunity costs of these productivity losses, together with the operation and maintenance expenses, amount to $556,000 per year for the average sized hospital. (Operating costs are slightly higher if installed systems are unable to take advantage of required bar codes on labels). Some of these expected productivity losses would be mitigated by efficiency gains in other hospital procedures as discussed later.

Despite these costs, interviews with consultants in the field of health care technology indicate that hospitals are gradually making this commitment. Experts have predicted that even in the absence of this regulation, hospitals would likely install bar code readable technology within 20 years. Therefore, we believe that while only about 101 hospitals currently use bar codes in everyday operations, the remaining 4,939 hospitals would ultimately invest in this technology. These experts have also predicted, however, that if standardized bar code information on medications were available to allow scanning systems to capture information without requiring in-facility labeling systems, many hospitals would be swayed to make these investments much earlier. Thus, we believe that the regulation would effectively prompt facilities to accelerate these investments.

Based on ERG's discussions with industry consultants, we predict that the rule could double the rate of hospital investment in this technology, thereby achieving the installation of complete systems within 10 years. For example, for those hospitals that now expect to acquire bar code systems within 10 years, we assume the availability of standardized bar codes on medications would accelerate the purchase to within 5 years. The cost to the hospital of this accelerated investment expenditure is the opportunity cost of the investment capital for 5 years (the difference between making the investment in year 5 as opposed to year 10) as well as the 5 additional years of maintenance expenses and productivity losses. In addition, industry experts suggest that systems of bar code readers and scanners would require software and equipment upgrades within 10 years of installation. For the example facility, the installed system would require upgrades during the 15th project year under the accelerated investment, whereas upgrades would not occur until the 20th year in the absence of regulation. We acknowledge that precise estimates of the rate of acceleration of technology acceptance are uncertain. However, industry experts indicated that doubling the rate of technology acceptance was not an unreasonable assumption. Alternative rates of acceptance were compared and discussed as a sensitivity analysis.

ERG used a probit pattern of adopting bar code reading technology. That is, the percentage of hospitals adopting the technology is modeled as a standard normal cumulative distribution with 0 percent adoption in year 0 and 100 percent adoption in year 20. The standard deviation of the distribution is chosen to ensure at least 1 adoption during the first year. This function has been used to describe rates of technology acceptance for other new products. In the hospital sector, for example, a study of medical technology infusion noted that complete unit dose systems, complete IV (intravenous) admixture systems, and computerized prescribed order entry (CPOE) systems have been accepted in this manner (Ref. 11). Consequently, for the 20-year period, FDA estimates the PV of the costs of the accelerated investment in bar coding technology by hospitals, including the annual operating expenses and productivity losses, to be $7.0 billion (7 percent) or $9.0 billion (3 percent). The estimated annualized cost is $657.2 million (7 percent) or $602.9 million (3 percent). As discussed in

[9] We have tried to quantify impacts on nursing and residential care facilities (NAICS 623) in response to comments on the proposed rule, but the relatively high costs of installing integrated bar code scanning systems and the relatively low rate of reported ADEs make it unlikely that the rule will affect this sector.

[10] Per hospital expenditures and benefits are based on an average sized hospital based on bed capacity. The average United States hospital has 170 beds (NCHS, 2002).

section VII.F.4, the regulation would reduce hospital operating costs because pharmacies would not apply in-house bar codes. In baseline, hospitals installing bar code systems would incur these expenses. Therefore, we expect that by the 17th year, annual operating costs for this industry will be lower than those that would occur in the absence of the regulation. Table 4 shows the annual incremental expenditures for adopting hospitals expected under the final regulation.

TABLE 4.—EXPECTED INCREMENTAL HOSPITAL EXPENDITURES BY YEAR IN MILLIONS

Evaluation Year	Incremental Cost to Hospitals Adopting Bar Codes
1	$0.8
2	$13.5
3	$102.8
4	$426.8
5	$1,039.3
6	$1,624.0
7	$1,852.3
8	$1,751.9
9	$1,478.0
10	$1,129.6
11	$772.4
12	$466.6
13	$243.0
14	$104.9
15	$32.6
16	$0.5
17	($11.6)
18	($17.0)
19	($17.5)
20	($17.7)

( ) indicates cost reduction from baseline to account for decreased in-house packaging.

H. Reduction in Preventable Adverse Drug Events and Preventable Acute Hemolytic Transfusion Reactions

The benefits of the rule are focused on the reductions in ADEs and AHTRs that would follow the earlier use of bar code reading technology and bar coded drug products. We have not quantified all the other institutional benefits of computerized systems and medical informatics, but have estimated a potential range of efficiency gains. Any ADEs avoided during a year are analyzed as if they occur at the end of the year.

ERG determined that under current conditions, about 1.25 million ADEs occur each year in the United States, of which 373,000 are preventable. As discussed above, the regulation would substantially reduce the number of ADEs caused by errors originating in the dispensing and administration of pharmaceutical or blood products in hospitals. Studies of medication errors in hospitals that have installed bedside bar coding and use internally applied labels show error interception rates of from 70 percent to 85 percent (Refs. 12 to 15 and 28). Other industry experts, however, suggest that those published interception rates would not be as high if the technology were widely dispersed, because of the likelihood of events such as lost wristbands, erroneous bar codes, or intentional system bypasses. Therefore, FDA and ERG have assumed that bar code system use would produce no reduction in prescribing and transcribing errors, but that its use would intercept one-half of the 45.1 percent of all preventable ADEs that now originate in the dispensing and administration stages of the medication process. Thus, ERG assumed that, if all hospitals adopted bar code systems, the number of preventable ADEs would fall by 22.6 percent (45.1 x 0.5), which would currently prevent about 84,300 ADEs per year (373,000 x 0.226). This equals a reduction of 16.7 preventable ADEs per year for an average hospital. Section VII.O below addresses the effect of alternative assumptions. Given projected increases in hospital admissions, within 20 years, we expect 543,000 preventable ADEs in the absence of this regulation. This analysis suggests that this regulation would prevent 123,000 ADEs, or 24.5 per hospital during the 20th evaluation year. We believe the assumption that bar code readers could intercept one-half of dispensing and administration errors is reasonable and conservative, but specifically tested this assumption as a sensitivity analysis.

Errors occur during any of the numerous steps in the production and delivery of blood and blood components. Several studies (Refs. 8, 16, and 27) have estimated that approximately 55 percent of transfusion errors occur in patient areas and originate from phlebotomy errors or incorrect patient identification. The machine readable information required on human blood products will be readable by installed systems. We expect bedside bar code systems to intercept 75 percent of these errors based on published case studies of interception rates that vary between 50 and 100 percent. Therefore, installation of bar code systems in hospitals is expected to prevent 114 AHTRs (276 x 0.55 x 0.75), or 0.023 per hospital. During the 20th evaluation year, bar code systems are expected to prevent 206 AHTRs (0.041 per hospital).

We estimate that the final rule, by stimulating earlier hospital investment in bar code scanning systems, will reduce ADEs and AHTRs. To project the aggregate number of ADEs and AHTRs avoided due to the final rule, ERG calculated the number of ADEs and AHTRs per hospital that would be avoided by bar coding systems and multiplied that number by the additional number of hospitals that would use bar coding reading systems during each year of the evaluation period. For example, during the 10th evaluation year, our model predicts that 2,469 more hospitals would have installed bar code reading systems than would have installed them in the absence of the rule. The additional hospitals using bar codes during the 10th year would intercept an estimated 52,600 errors, taking into account expected increases in admissions as well (21.3 ADEs per hospital x 2,469 hospitals), that would otherwise have resulted in ADEs during that year. In addition, there would be 75 fewer AHTRs because of the increased use of bar code systems during that year. Over the entire evaluation period, this methodology predicts that the accelerated investment would avoid over 501,300 ADEs and 700 AHTRs.

I. Value of Avoided ADEs and AHTRs

1. Value of Avoided ADEs

Estimating benefits requires estimating the value of the avoided ADEs and AHTRs. FDA and ERG estimated two values of avoided preventable ADEs. First, ERG estimated the avoided direct hospital costs needed to cover additional tests, longer patient stays, and other direct expenses. Based on published studies, the estimated average direct cost of an ADE not attributable to prescribing error is $2,257 (Refs. 3, 5 and 29). This figure represents a weighted average of direct hospital costs over all degrees of ADE severity and does not include patient pain and suffering or liability. Second, ERG and FDA estimated the monetized value of avoiding decreases in quality-adjusted life years (QALYs) due to ADEs. This latter approach attempts to value a patient's subjective ADE experience, including inconvenience,

pain and suffering, foregone earnings, and other out-of-pocket costs.

ERG examined the literature to determine the probability distribution of specific symptoms associated with ADEs. These reported symptoms range from rashes and itching to cardiac arrhythmia, renal failure, and mortality. The duration of each symptom (additional length of hospital stays) ranged from about 0.7 days to 5.5 days (except for mortality). ERG then examined reported preference scores from the Harvard Center for Risk Analysis' (HCRA) Catalog of Preference Scores, which includes a survey of the health economics literature and presents published estimates of preferences for defined symptoms. The preference scores ranged from 0.95 (for significant but not serious ADEs) to 0.00 for death. Typical symptoms encountered with serious ADEs had a preference score of 0.8, while life-threatening ADEs had a derived preference score of 0.6. We note that the reported preference scores vary widely by definition and methodology and must be interpreted with great caution.

ERG calculated the change in QALYs expected from an avoided ADE as 1 minus the preference score multiplied by the duration of the event. For example, minor drug toxicity (such as a rash) has a derived preference score of 0.95 and a reported duration of 2 days (0.005 years). The change in QALYs expected for such an event is 0.05 (1 minus 0.95) x 0.005, or 0.0003 QALYs. There is no consensus on the best means of valuing QALYs or the best estimates of willingness-to-pay for QALYs. One approach is to derive the value from studies that estimate the willingness-to-pay to avoid a statistical mortality risk. For example, values derived from occupational wage-premiums to accept measurable work-place risk are about $2 million to $10 million per statistical death avoided, with a typical estimate of about $5 million. Apportioning this value over the remaining life expectancy of the average workforce member and adjusting for future disability implies (at 7 percent discount rate) a value per QALY of about $373,000. If using a 3 percent discount rate, the adjusted value per QALY is estimated at about $213,000. Thus, in the example above, the value of the decrease in QALYs due to minor drug toxicity would be $102 (7 percent) or $64 (3 percent).

ERG examined the literature and found that by combining several published accounts, 36.1 percent of the outcomes associated with preventable ADEs were deemed significant, 41.7 percent were deemed serious, 19.4 percent were deemed life threatening (of which 10 percent [or 1.9 percent of the total] resulted in permanent conditions), and 2.8 percent resulted in fatalities. Overall, these assumptions indicate that the weighted average preference value for each avoided preventable ADE is $183,500 with a 7 percent annual discount rate. A 3 percent annual discount rate would indicate a weighted average preference value of $181,600. The derived values are similar because the contribution of avoided mortality. We note that these values are very sensitive to the number of fatal preventable ADEs.

2. Value of Avoided AHTRs

As for ADEs, AHTRs caused by erroneous transfusions might lead to additional laboratory tests, extended hospital stays, and other direct costs. ERG judged that these direct additional hospital costs would be equivalent to those for ADEs and estimated them to equal $2,257 per AHTR.

To estimate the monetary value of a change in QALYs resulting from erroneous transfusions, ERG examined the range of potential reactions experienced by patients that receive ABO-incompatible blood. As reported in two studies (Refs. 7 and 27), almost half (47 percent) of patients suffer no ill effects, and 3 percent of patients may die due to an underlying condition. Most of the remaining half of patients may experience fever, chills, chest pain, nausea or other relatively mild symptoms for short durations. However, an AHTR may occasionally lead to acute renal failure or death. The weighted average preference value for each avoided AHTR is $101,200 using either 7 percent or 3 percent discount rate. As for ADEs, this estimate is dominated by the high value placed on mortality avoidance.

J. Aggregate Benefit of Avoiding ADEs and AHTRs

FDA and ERG estimated the benefit of avoiding ADEs and AHTRs due to the use of bar code reading systems by multiplying the value of each avoided preventable ADE and AHTR by the expected number of ADEs and AHTRs avoided. As stated earlier, an average hospital is expected to have fewer preventable ADEs and fewer preventable AHTRs each year under current conditions after installing bar code reading technology. Within 20 years, these systems are expected to avoid 24.5 ADEs and 0.041 AHTRs per hospital because of increased admissions. The direct cost savings by avoiding treatment ($2,257 per ADE or AHTR) and the weighted preference values ($183,500 per ADE and $101,200 per AHTR) indicate a societal value of $185,800 per average ADE avoided and $103,500 per average AHTR avoided (using 7 percent discount rate), and a societal benefit of about $3.48 million per facility during the first evaluation year. We multiplied this derived value per hospital by the expected difference in the number of hospitals with installed bar code technology under the rule. For example, during the 10th evaluation year, an estimated 2,469 additional hospitals would have installed bar code reading systems due to the rule. We would expect the increased use of these systems to result in 51,500 fewer ADEs and 71 fewer AHTRs than in the absence of the regulation. The estimated PV of avoiding these ADEs and AHTRs during the 10th year is $4.9 billion (7 percent) or $7.1 billion (3 percent). The PV of the societal benefits that would result from reductions in ADEs and AHTRs over the entire 20-year evaluation period is $54.8 billion (7 percent). The annualized societal benefit of the reduced number of ADEs and AHTRs is $5.2 billion at 7 percent annual discount rate. Table 5 illustrates the expected reduction in ADEs and AHTRs for the entire evaluation period. The PV for AHTR avoidance alone is $42.2 million and annualized at $4.0 million at 7 percent.

TABLE 5.—EXPECTED REDUCTION IN ADES AND AHTRS BY YEAR WITH BAR CODE SOCIETAL BENEFITS IN MILLIONS (7 PERCENT)

Evaluation Year	Additional ADEs Avoided	Additional AHTRS Avoided	Gain in QALYS	Monetized Benefit of Avoided ADEs/AHTRs
1	37	0	57.7	$6.8
2	595	1	928.4	$110.6

TABLE 5.—EXPECTED REDUCTION IN ADES AND AHTRS BY YEAR WITH BAR CODE SOCIETAL BENEFITS IN MILLIONS (7 PERCENT)—Continued

Evaluation Year	Additional ADEs Avoided	Additional AHTRS Avoided	Gain in QALYS	Monetized Benefit of Avoided ADEs/AHTRs
3	4,566	6	7,129.2	$849.2
4	18,171	25	28,369.0	$3,378.8
5	46,364	64	72,384.5	$8,621.1
6	72,898	101	113,808.7	$13,554.8
7	83,230	115	129,938.8	$15,476.0
8	79,083	110	123,464.9	$14,704.9
9	66,933	93	104,495.8	$12,445.7
10	51,528	71	80,445.8	$9,581.3
11	35,521	49	55,455.9	$6,604.9
12	21,828	30	34,078.4	$4,058.8
13	11,732	16	18,316.0	$2,181.5
14	5,493	8	8,575.2	$1,021.3
15	2,232	3	3,484.2	$414.9
16	774	1	1,208.6	$143.9
17	239	0	373.5	$44.4
18	58	0	90.3	$10.7
19	12	0	18.3	$2.2
20	0	0	0	$0
Total	501,294	693	782,623.2	$93,211.8

Using a 3 percent discount rate, the PV of avoided ADEs and AHTRs totals $73.0 billion with an average annualized equivalent of $4.9 billion. The benefit attributable to avoided AHTRs alone has a PV of $56.8 million and an annualized value of $3.8 million using 3 percent annual discount rate.

K. Cost Effectiveness of Bar Coding

In order to estimate the value of each ADE or AHTR avoided, ERG estimated the decrease in QALYs that would be expected from each event. As discussed in section VII.I.1, each ADE or AHTR avoided represents a weighted average of potential outcomes. The weighted average decrease in QALYs for an ADE was 1.56 QALYs and 0.87 for each AHTR. These estimates imply that each avoided ADE would contribute 1.56 QALYs to the public. As shown in Table 5, over the entire course of the evaluation period, the number of avoided ADEs and AHTRs account for 782,623.2 QALYs gained. The PV of these QALYs gained equals 460,508 using a 7 percent discount rate and 618,861 using a 3 percent discount rate.

Table 6 shows the cost-effectiveness per QALY gained at various discount rates. The costs used to estimate the effectiveness include the direct regulatory costs as well as increased expenditures by hospitals. Cost-effectiveness shows that the regulation will require costs of between $9,000 and $15,000 for each additional QALY gained.

TABLE 6.—COST EFFECTIVENESS PER QALY GAINED

	Cost-Effectiveness at 7 percent	Cost-Effectiveness at 3 percent
Undiscounted QALYs	$9,009	$11,595
QALYs Discounted at 7 percent	$15,311	N/A
QALYs Discounted at 3 percent	N/A	$14,663

Note: Present value of costs are divided by the gain in QALYs. For example, the present value of costs using a 7 percent discount rate is approximately $7.05 billion. This amount, when divided by approximately 782,600 QALYs, results in $9,009 per QALY ($9,008.43, rounded up to $9,009).

L. Other Benefits of Bar Code Technology

The availability of standardized bar codes would result in additional benefits to patients and the health care sector. As bar codes are an enabling technology, their adoption for hospital patient care would foster their use in other hospital and non-hospital settings. With automated systems, hospitals would no longer need to repackage and self-generate bar codes. Hospital pharmacies and wards would likewise take advantage of the availability of bar coded products to generate new production efficiencies for activities such as reporting, record keeping, purchasing, and inventory controls. For example, integrated scanning systems may allow for electronic versions of daily Medication Administration Records (MARs) and pharmacy reconciliation reports. According to industry experts, if these activities could be avoided by automatically generating the records, an average sized hospital could save as many as 397 hours of pharmacist resources and 5,694 hours of nursing resources each year. The estimated annual efficiency savings of avoiding these opportunity costs equals $218,300 for an average hospital. Moreover, ERG and FDA believe the identified potential gains from electronic MAR and reconciliation reports may account for only between 50 and 80 percent of the potential gains in these areas. Discussions with several hospital administrators indicate that integrated bar code systems could result in reduced "hallway" time and improved communication. For example, nurses will spend less time walking between a patient and the nursing station to resolve discrepancies, and a bar code system would require complete consistency of medication orders between pharmacy and nursing staffs. In addition, bar code technology may achieve efficiencies in other laboratories as well. If so, the total estimated annual efficiency gains to an average hospital would range from $272,900 to $436,600 from use of bar code scanners in pharmacies and patient care wards. If such gains were obtainable, the PV of these gains for the sector as a whole would be between $4.0 billion and $6.4 billion with a 7 percent annual discount rate. The PV of this potential gain would be between $5.3 billion and $8.5 billion if a 3 percent discount rate is used in the calculation. The average annualized gains of these potential efficiencies are between $376.3 million and $602.0 million (at 7 percent), or $359.0 million and $574.2 million (at 3 percent).

The final rule could also increase the use of medical informatics in locations other than hospitals. Health care facilities such as physician offices, nursing homes, long-term care facilities and home health delivery systems would be more likely to adopt bar coding and scanning systems to safeguard the use of patient medications and achieve additional efficiencies. However, ERG's analysis of the adoption of bar code technology in nursing homes and long-term care facilities does not indicate a rapid adoption at this time.

According to the AHCA, there are 16,456 nursing homes in the United States. ERG estimates the initial investment for an average nursing home to install a bar code system to be $221,400 and to have annual operating, maintenance, and net efficiency costs of $67,000. Most costs are for purchasing laptop computers for nursing wards as well as training costs. The major study of preventable ADEs in nursing homes (Ref. 17) has estimated that there are only 10,373 preventable ADEs per year in nursing homes attributable to dispensing or administration, or less than 0.67 preventable ADEs per facility. If the use of a bar code system could intercept 50 percent of these ADEs, the benefit per facility per year would equal 0.32 ADEs. There are strong indications that these estimates of prevented ADEs are conservative because the study is based on voluntary reporting.

Comparisons between the drug classes associated with ADEs in nursing homes (Refs 17 and 18) and those in hospitals resulted in a distribution of expected outcomes of ADEs different than those in hospitals. For example, Bates (Ref. 2) found that 38 percent of all preventable ADEs were associated with analgesics and antibiotics, while in nursing homes, only 13 percent of all ADEs were associated with these drug classes. Using the distribution of drug classes associated with preventable ADEs in nursing homes, the weighted average value of a prevented nursing home ADE was $43,200 (7 percent) and $63,700 (3 percent). These estimated values are based on very limited analyses conducted to date in nursing homes.

Forecasted adoption rates for nursing homes resulted in PV of costs of $3.8 billion and PV of benefits of only $0.5 billion (7 percent). At 3 percent the PV of costs to nursing homes was $4.9 billion while the PV of ADE avoidance was only $0.6 billion. With profit margins so slight in this industry, we do not believe the technology will be rapidly adopted at this time in spite of the accessibility of bar coded products. We emphasize the current scarcity of data on ADEs in nursing homes. The definition of "preventability" used to analyze ADEs in hospitals may not transfer to these settings, which may severely under estimate the potential benefit. However, we cannot project impacts of this rule for this industry at this time.

M. Distributional Effects of Bar Code Technology

Bar code usage would likely result in distributional transfers between sectors of society. For example, bar code use could reduce hospital payments due to punitive damage awards from potential lawsuits. According to legal data bases (Ref. 19), there were approximately 35,000 personal-injury and malpractice claims per year between 1995 and 2000 in the health care sector. Approximately half of these claims were for pregnancies with the remainder including surgical claims, misdiagnosis, and medication errors. If these claims are distributed equally by type (surgical, diagnosis, or medication errors) and sector (inpatient or outpatient), we estimate that about 600 legal claims per year are potentially associated with preventable ADEs in hospitals. This implies that only 0.2 percent of all preventable ADEs are likely subject to legal claims (600 divided by 373,000). The average jury award for damages from medication errors was $636,800 in 2000, although only 40 percent of cases were decided for plaintiffs. Estimated average pre-trial settlements for malpractice claims in 2000 totaled $318,400. We do not have data on the proportion of settlements, but have assumed 80 percent of claims are settled prior to trial. If so, the average likely award per preventable ADE is $492. Current bar code systems are expected to avoid 16.7 ADEs per year in an average hospital. This implies an average reduction in annual legal awards of $8,200 per hospital and $41.4 million for all hospitals. Fewer awards would result in lower malpractice insurance premiums, which would reduce other hospital expenditures. The General Accounting Office (Ref. 20) reported hospital malpractice insurance rates ranging between $511 and $7,734 per bed depending on location. Recent reports have suggested that annual premiums have increased to about $4,228 to $11,435 per bed (Ref. 21). Although only a weak relationship has been established between negligent acts and the incidence of malpractice claims (Refs. 22 to 24), we attempted to estimate the potential size of any impact on premiums. Rothchild et al (Ref. 25) estimated that only 6.3 percent of all malpractice claims were the result of ADEs. Given the distribution of ADEs in

the medication process, we expect a 50 percent reduction in ADEs caused by distribution and administration errors to reduce premiums by 0.55 percent, or $49 per bed to the average hospital. The total expected saving would be $8,330 per hospital and $42.0 million for all hospitals. While reductions in legal settlements or liability insurance premiums represent transfers between hospitals, third-party payers, attorneys, and patients and are not opportunity gains or losses, such reductions could increase the efficient allocation of resources by sector.

Bar code systems may also increase hospital revenues by improving the "cost capture rate." One published study (Ref. 26) reported the cost capture rate (the ratio of billed uncontrolled pharmaceuticals to all pharmaceuticals used) increased from 63 percent to 97 percent after installation of computerized systems in nursing wards. According to the authors, this would imply an increase in revenues of about $65,000 per year for an average hospital. While such accounting improvements are transfers from patients and third-party payers to hospitals rather than reduced opportunity costs, this practice illustrates the potential use of bar code scanning systems in increasing the efficient allocation of resources by sector. Other potential transfers may include avoidance of certain billing errors or increased timeliness of payment.

N. Comparison of Costs, Expenditures, and Benefits

The increase of over 780,000 QALYs over the evaluation period as a result of avoiding over 500,000 ADEs and AHTRs has a monetized present value of $54.8 billion (discounting at 7 percent) and $73.0 billion (discounting at 3 percent). This section compares the expected benefits of the regulation to the costs and expected expenditures discussed earlier.

The annualized costs of the final rule to the manufacturing, packaging, and labeling sectors totals $5.4 million (7 percent) or $4.1 million (3 percent). Hospitals would be required to incur an annualized cost of $0.6 million to continue current operating practices (7 percent) or $0.4 million (3 percent). FDA's resource costs to support the regulation equal an estimated $2.4 million per year. Thus, we estimate the annualized regulatory cost of the regulation to be $8.4 million (7 percent) and $6.9 million (3 percent). In addition, we expect the rule to spur earlier investment by hospitals in bedside point-of-care systems that read bar coded labels. The annualized opportunity cost of this accelerated investment in technology is $660 million (7 percent) for the entire industry, or $600 million with a 3 percent discount rate. Table 7 presents, by sector, the present value of the estimated regulatory costs, the annual costs expected at the end of the 20-year evaluation period, and the annualized costs over the entire evaluation period for both discount rates. The estimated reduction in hospital operating expenses results from the assumption that hospitals could eliminate in-house labeling operations once products have uniform bar code information.

TABLE 7.—COSTS AND OTHER EXPECTED EXPENDITURES OF THE FINAL RULE

Industry Sector	Present Value of Costs	Annual Operating Costs at End of Period	Annualized Costs
(in millions of dollars; 20-year evaluation period; 7-percent discount rate)			
Prescription Drugs	$33.6	$0.4	$3.2
OTC Drugs	$23.3	$0.3	$2.2
Blood Products	N/A	N/A	N/A
Sub-Total Manufacturers	$56.9	$0.7	$5.4
Hospital Regulatory	$6.4	(-$0.2)**	$0.6
Sub-Total Private Sector Regulatory Costs	$62.3	$0.5	$6.0
FDA Oversight	$25.4	$2.4	$2.4
TOTAL REGULATORY COSTS	$87.7	$2.9	$8.4
EXPECTED EXPENDITURES FROM HEALTH CARE SECTOR	$6,961.6	(-$17.7)**	$657.2
(in millions of dollars; 20-year evaluation period; 3-percent discount rate)			
Prescription Drugs	$37.0	$0.4	$2.5
OTC Drugs	$23.8	$0.3	$1.6
Blood Products	N/A	N/A	N/A
Sub-Total Manufacturers	$60.8	$0.7	$4.1
Hospital Regulatory	$5.5	(-$0.2)**	$0.4
Sub-Total Private Sector Regulatory Costs	$66.3	$0.5	$4.5
FDA Oversight	$35.7	$2.4	$2.4
TOTAL REGULATORY COSTS	$102.0	$2.9	$6.9

TABLE 7.—COSTS AND OTHER EXPECTED EXPENDITURES OF THE FINAL RULE—Continued

Industry Sector	Present Value of Costs	Annual Operating Costs at End of Period	Annualized Costs
EXPECTED EXPENDITURES FROM HEALTH CARE SECTOR	$8,971.4	(-$17.7)**	$602.9

*Less that $0.05 million
**Hospital operating costs decrease due to fewer in-house packaging and bar coding operations

As discussed above, we estimate the annualized public health benefit to be $5.2 billion (7 percent) and $4.9 billion (3 percent). This estimate includes the societal value of the avoided ADEs and AHTRs as well as the reduced hospital stays expected due to the earlier use of bar code reading technology. We estimate other indirect potential benefits, such as efficient inventory control, patient tracking, electronic generation of daily reconciliation and medication reports, or other administrative gains, to contribute an annualized amount of between $376.3 and $602.0 million in efficiency gains to hospitals (7 percent) and between $359.0 and $574.2 million (3 percent). The likely distributional effects of revenue enhancement, other cost capture measures, or reduced legal costs are not included in this comparison.

If all costs and expenditures are combined, the annualized outlays total $665.6 million (7 percent) and $609.8 million (3 percent). The expected annualized public safety benefit of over $5.2 billion (7 percent) and $4.9 billion (3 percent) far outweighs these outlays. Thus, the annual net benefits for the entire evaluation period are between $4.5 billion (7 percent) and $4.3 billion (3 percent). The expected cost effectiveness varies between $9,000 and $15,300 for each QALY gained, depending on the discount rate used. Moreover, this calculation does not account for the potential efficiency gains as described above.

O. Uncertainty and Sensitivity

We recognize that the expected impacts of the regulation are based on a large number of uncertain assumptions. We attempted to account for this uncertainty by examining the key assumptions in the analysis. Table 8 summarizes the results of our analyses.

TABLE 8.—SUMMARY OF UNCERTAINTY AND SENSITIVITY ANALYSES

Variable	Base Case Assumption	Alternative Assumption	Effect on Annualized Net Benefits (7 percent)	Total Annualized Net Benefit (millions)
Voluntary Share of Labeling Costs	50 percent	None	-$2.1 million	$4,498.00
	50 percent	100 percent	+$2.1 million	$4,502.00
Impact of Regulation On Unit of Use Package	N/A	N/A	No Impact Expected	$4,500.00
Implementation Period	2 Years	1 Year	-$0.1 million	$4,500.00
	2 Years	3 Years	+$0.1 million	$4,500.00
Mortality Probability With ADE	2.8 percent	1.0 percent	-$2.6 billion	$1,900.00
	2.8 percent	0.1 percent	-$3.8 billion	$700.00
Value of QALY/VSL	$373,000/QALY $5 million/VSL	$100,000/QALY $2 million/VSL	-$3.2 billion	$1,300.00
Boundary Analysis	N/A	N/A	Breakeven point requires gain of 103 years of hospital use of bar code technology as compared to baseline	N/A
Hospital Rate of Adoption of Bar Code Systems	20 year baseline 10 year with regulation	30 year baseline 20 year with regulation	-$1.3 billion	$3,200.00
	20 year baseline 10 year with regulation	20 year baseline 15 year with regulation	-$2.9 billion	$1,600.00
Increase in Interception Rate Attributable to Bar Codes	50 percent	20 percent	-$3.1 billion	$1,400.00
	50 percent	80 percent	+$3.1 billion	$7,600.00
Loss of Nursing Productivity	3 percent	1 percent	+$420 million	$4,900.00

TABLE 8.—SUMMARY OF UNCERTAINTY AND SENSITIVITY ANALYSES—Continued

Variable	Base Case Assumption	Alternative Assumption	Effect on Annualized Net Benefits (7 percent)	Total Annualized Net Benefit (millions)
	3 percent	5 percent	-$520 million	$4,000.00
Small Hospital Adoption	N/A	N/A	Annual net benefits of adoption of bar code systems for hospitals with 50 or fewer beds estimated at $47,000 per hospital.	N/A

1. Voluntary Share of Labeling Costs

The costs attributable to the final rule are the incremental costs above what the industry would incur in the normal course of business. As briefly discussed earlier, many drug products change labels, on average, as often as once a year for marketing or design reasons. The ERG estimate, however, assumes that 50 percent of the required labeling costs would be attributable to the final rule, due to the production process changes that would be required to use bar coding equipment. In addition, we believe that market driven label changes are not completely comparable to regulatory required changes. We reviewed the sensitivity of this assumption by examining the impact that would occur if no required re-labeling costs were attributable to the regulation or all re-labeling costs were attributable to the final rule. ERG found that these scenarios altered the current estimate of $5.4 million in annualized costs for manufacturers, repackers, relabelers, and private label distributors (7 percent) to a range of from $3.3 million (if all costs are considered voluntary) to $7.5 million (if no additional labeling costs are considered voluntary). Using a 3 percent discount rate, the annual labeling costs to manufacturers could vary from between $2.6 million and $6.1 million.

2. Packaging Decisions

We are sensitive to industry packaging decisions and asked our contractor to specifically assess the impact of the regulation on the future of unit-dose packaging (e.g. blister packs) trends. The concern was whether bar code printing would reduce the use of unit-dose packaging, because it would add more to its cost than to other formats. In general, ERG found that although the overall demand for the product is inelastic, the demand for a particular package type is more elastic, in that it is affected by relative prices to a greater degree. Industry contacts, however, noted that this impact is moderated because consumers of some OTC drug product are accustomed to blister packs, and manufacturers could lose market share if they abandon this format. Also, many hospitals require drug purchases to be in unit-dose form.

ERG concluded that although a bar code requirement would increase the relative cost of the unit-dose version of a product, the cost increment would not be great enough to significantly impact the market. In fact, ERG found that the expected reduction in hospital over-packaging could increase market demand for unit-dose products despite the cost difference. Thus, we expect that the final rule will not have a significant impact on product packaging choices.

3. Implementation Period

We were interested in the effects of shortening or lengthening the implementation of the regulation. However, discussions with hospital administrators indicated that the adoption rate of bar codes would not be noticeably accelerated with shorter implementation period. They felt that it was unlikely that investments would be made earlier. Therefore, benefits would be unlikely to change whether the implementation period was longer or shorter. The regulatory costs of compliance would increase with shorter implementation periods. At a 7-percent annual discount rate, the average annualized regulatory cost would increase from $8.4 million with a 2-year implementation period to $8.5 million with a one-year implementation period and decrease to $8.3 million with a 3-year period.

If a 1-year implementation date persuaded one hospital to invest 1 year earlier, 16.7 ADEs could be avoided. The value of avoiding these events is $3.1 million. In comparison, if a hospital invested in a bar code reading system a year earlier than it otherwise would have, it would have increased costs of about $620,000 based on amortization of investment and one additional year of operating costs. The net benefit ($2.5 million), when amortized over 20 years, would result in average annualized benefits of over $0.2 million. This is greater than the average annualized cost of the shorter implementation period. However, as noted earlier, discussions with hospital administrators and budget planners have not indicated that a shorter implementation period would have an effect on these investment decisions.

4. Value of Mortality Associated with ADEs

ERG estimated that 2.8 percent of preventable ADEs and 2 percent of all AHTRs are fatal. This was derived by averaging results from several medical studies. These studies relied on relatively small samples and varying methodologies. Due to the uncertainty attached to this estimate and the major impact this assumption has on valuing public health benefits, we tested two additional mortality rates: 1 percent and 0.1 percent. These rates reduce the expected value of an avoided ADE from $185,800 to $93,700 and $48,400, respectively, by changing the probability distribution of the expected outcomes of ADEs. The impact on the expected annualized benefits of ADE avoidance falls from $5.2 billion to $2.6 billion and $1.4 billion respectively. These estimated benefits continue to exceed the costs.

5. Value per QALY

There is no precise measure of value for a quality-adjusted life-year. We have used average published estimates of society's implied value of a statistical life (VSL) of $5 million derived from wage premiums required to attract employment to higher risk occupations. The life expectancy of a 35 year-old blue-collar male employee (the basis for most of the wage premium data) was adjusted for expected future bed and non-bed disability. When the implied VSL is amortized over the 41.3 years of adjusted life-expectancy using a 7 percent discount rate, the resulting value ($373,000) implies societal willingness-to-pay for a QALY. Cost-effectiveness studies have claimed that lower values, as low as $100,000, may better represent QALYs. In addition, the VSL value is based on research conducted in the early 1990's and relies on relative risk and relative wages. Other estimates of VSL have ranged

from as low as $2 million to as high as $10 million.

We analyzed the societal benefit of the regulation using $100,000 as the QALY value and the low VSL estimate ($2 million) as the representative of societal willingness to pay (WTP) to avoid the probability of a fatality. The WTP to avoid an ADE decreased from $185,800 to $71,600 using these parameters. Overall, the annualized benefit of the proposed regulation fell from $5.2 billion to $2.0 billion.

6. Boundary Analysis

We analyzed the minimum number of hospital-years of bar code adoption necessary for estimated benefits to exceed costs. The regulatory costs of the regulation account for only 0.2 percent of the net societal benefits. This implies that the regulation would need to encourage early adoption of bar code technology by at least 0.2 percent in order for benefits to exceed costs. In baseline, we expect 51,410 hospital-years of installed bar codes. (The 101 current user of bar code systems will use it for all 20 years, the remaining 4,939 hospitals will have installed systems for an average of 10 years each.) The regulation would have to encourage 103 additional hospital-years (0.02 percent). This could occur by 103 hospitals investing 1 year earlier than they would in baseline.

7. Hospital Response Rates

The expected benefits rely on a faster rate of hospital acceptance of bar code technology than the rate expected in the absence of the regulation. The current estimate of public health benefits is based on all hospitals acquiring bar coding systems within 10 years as compared to 20 years without the rule. However, because we are not requiring hospitals to make this investment, we examined the impact of different diffusion rates. ERG examined 2 additional scenarios; one in which the technology is accepted within 20 years with a rule as compared to 30 years without a rule as well as one in which technology is accepted within 15 years as compared to 20 with the rule. Both cases decrease costs and benefits. The first case reduced expected annualized net benefits from $4.5 billion to $3.2 billion. Annualized hospital expenditures declined from $657 million to $493 million and benefits decreased from $5.2 billion to $3.7 billion. The second case reduced annualized net benefits to $1.6 billion. Annualized hospital expenditures declined from $657 million to $320 million and benefits decreased from $5.2 billion to $1.9 billion. The public health benefits of the rule would still exceed costs and expenditures with these slower diffusion rates.

8. Hospital Intercept Rates with Machine-Readable Technology

Avoidance of patient ADEs depends on the expected rate of error interception. For this analysis, ERG found that about 45 percent of the errors that lead to preventable ADEs originate in the dispensing and administration stages of the medication process and that the use of bar coded information and installed systems would intercept about 50 percent of these errors. Because of the direct relationship between expected interception rates and avoided ADEs, we tested the impact of the assumed rates. Although the literature has implied that interception rates as high as 85 percent are obtainable, ERG assumed a 50 percent rate to account for potential non-optimal use of technology. If the true increase in interception rates were between 80 percent and 20 percent, the total number of avoided ADEs would be between 805,700 and 198,500. The monetized annualized value of these avoided ADEs would vary from the current estimate of $5.2 billion to the lower and higher values of $2.1 billion (with a 20 percent improvement in interception rates) or $8.3 billion (with an 80 percent improvement in interception rates). From a societal perspective, therefore, the accelerated technology investment appears reasonable even with significantly lower interception rates.

9. Productivity Losses in Hospital Wards

The decision by hospitals to make significant investments in bar code reading technology is highly dependent on expected productivity changes in the delivery of bedside care by nurses. Our current analysis assumes a 3 percent productivity loss of ward nurses due to the use of this new technology (see section VII.G). We examined the sensitivity of this estimate and found that if long-term productivity loss approximated only 1 percent of the current workload, the average annualized cost of accelerated hospital investments would decrease from $657.2 million to $238.4 million. However, if the productivity loss of nursing resources were as great as 5 percent, the annualized expenditures by hospitals would increase to $1.2 billion. In order for the productivity losses to outweigh the expected benefits, however, there would have to be an almost 700 percent estimated productivity loss.

10. Investments by Hospital Size

The internal decision to acquire and use new bar code reading technology could be affected by the size of the purchasing hospital. Hospitals that have already installed this equipment are, for the most part, fairly large or part of a large network of hospitals. Because the benefits of error interception are dependent on the number of annual admissions, we were concerned about the likelihood of technology adoption by small hospitals.

According to the most recent census, there are 1,218 hospitals in the United States with capacities fewer than 50 beds. These hospitals account for only about 3 percent of the estimated annualized opportunity cost of investment from this rule, because the potential productivity losses are not as great as for larger hospitals. The annualized opportunity costs per facility with fewer than 50 beds is about $69,200. However, because of the fewer admissions to hospitals of this size, we estimate that the interception rate of the bar code technology is expected to result in an average of 2.2 avoided ADEs per year per facility. The estimated societal benefit of avoiding 2.2 ADEs is $408,800. If these small hospitals adopt technology at the same accelerated rate as all hospitals, the annualized benefit per hospital is $116,900, or more than the investment.

We are aware that the estimated direct annual hospital cost savings of avoiding ADEs alone ($2,257 per avoided ADE) may not cover the costs of the expected earlier investment pattern. For example, the average facility with fewer than 50 beds would experience direct annual cost savings of $4,965 (2.2 ADEs avoided x $2,257) and annualized costs of $69,200. As noted, the investment decision to install bar code reading technology is voluntary and would include consideration of patient safety and other cost-savings. We have estimated that potential reductions in resources needed to generate reports and keep track of records may likely vary between $27,400 and $43,700 per year for a small hospital. Other institutional gains, including transfers such as increased revenue capture rates and reduced malpractice awards, may also affect internal decisions. Many industry representatives have indicated their willingness to invest in this technology. Nonetheless, even if some hospitals choose to delay or not to invest, this rule would still produce substantial societal benefits.

P. Small Business Analysis and Discussion of Alternatives

We believe the final rule is unlikely have a significant impact on a substantial number of small entities. Despite this, in the proposed rule, we prepared an initial Regulatory Flexibility Analysis (IRFA) and invited comment from affected entities. In addition, the final rule is considered a significant economic impact under UMRA and alternatives are examined and briefly discussed here.

1. Affected Sectors and Nature of Impacts

We described the affected industry sectors earlier in this section. The final rule directly affects manufacturers of pharmaceutical and biological products (NAICS 325412 and NAICS 325414), packaging services (NAICS 561910), and indirectly affect hospitals (NAICS 622). The regulation does not affect blood and organ banks (NAICS 621991). We accessed data on these industries from the 1997 Economic Censuses and estimated revenues per establishment. Although other economic measures, such as profitability, may provide preferable alternatives to revenues as a basis for estimating the significance of regulatory impacts in some cases, any reasonable estimate of profits would not change the results of this analysis. These revenues were updated to 2000 values by using the Consumer or Producer Price Index as appropriate.

a. *Pharmaceutical manufacturers (NAICS 325412).* The Small Business Administration (SBA) has defined as small any entity in this industry with fewer than 750 employees. According to census data, 84 percent of the industry is considered small. The average annual revenue for these small entities is $26.6 million per entity. Small manufacturers of prescription and OTC drug products dispensed pursuant to an order and commonly used in hospitals would be required to generate and label products with bar coded information. We estimate the annualized compliance costs for small entities in this industry at $1,800 per entity. This is less than 0.1 percent of their annual revenues. We believe this does not constitute a significant impact on a substantial number of small entities in this industry.

b. *Biological product manufacturers (NAICS 325414).* The SBA has defined as small any entity in this industry with fewer than 500 employees. According to census data, 68 percent of the industry is considered small. The average annual revenue for these small entities is $4.7 million per entity. Small manufacturers of biological products would be required to label products with bar coded information. We estimate the annual compliance costs for small entities in this industry at $600 per entity. This is less that 0.1 percent of their annual revenues. We believe this does not constitute a significant impact on a substantial number of small entities in this industry.

c. *Packagers (NAICS 5619190).* The SBA has defined as small any entity in this industry that has less than $6 million in annual revenues. On this basis, almost 75 percent of the industry is considered small. The average annual revenue for small entities is $1.7 million per entity. Small packagers would be required to apply bar coded information to all affected products. This would require printing and process improvements to packaging operations. We estimated the annualized compliance costs for small entities in this industry at $240 per entity. This is less than 0.1 percent of their annual revenues. We believe this does not constitute a significant impact on a substantial number of small entities in this industry.

d. *Blood and organ banks (NAICS 621991).* The SBA has defined as small any entity in this industry that has less than $8.5 million in annual revenues. On this basis, 40 percent of the industry is considered small. The average annual revenue for small entities is $1.4 million per entity. Small blood banks and collection centers currently apply bar coded information to all blood products and would not be affected by this regulation.

e. *Hospitals (NAICS 622).* The SBA has defined as small any entity in this industry with less than $29.0 million in annual revenues. According to census data, 35 percent of the industry is considered small. The average annual revenue for small entities is $12.6 million per entity. There is no specific regulatory requirement for hospitals to respond to this regulation. We anticipate that the rule would make the investment in bar code technology more attractive to hospitals, but the final rule does not require hospitals to make such investments. Hospitals that have already installed bar code reading systems and internally affix self-generated information might find it necessary to prematurely upgrade or replace currently installed scanners in order to capture bar coded information on small vials or bottles. These hospitals would also achieve productivity gains by avoiding the resources now used to self-generate bar code readable information. The total annual net cost of the regulation is estimated at $3,300 per facility, which is equal to less than 0.1 percent of their annual revenues. We believe this does not constitute a significant impact on a substantial number of small entities in this industry.

2. Alternatives

We considered several alternatives to the regulation. Each is discussed below.

a. *Do nothing.* This alternative would not result in any change in current labeling or packaging practices. We believe that in the absence of agency action, hospitals would gradually purchase and utilize independent bar code reading systems, but that it would take 20 years before they were installed in all facilities. We rejected this alternative because of the expected positive net benefits of the rule. Also, we believe that standardizing bar codes would generate additional health and production efficiencies for a variety of different health care sectors.

b. *Requiring variable information.* We considered requiring additional information in bar codes, such as expiration dates and lot numbers. The incremental benefit of this data would include improved inventory control and ease of recalls. In addition, we are aware that some firms are voluntarily applying this information. However, we were unable to quantify the potential public health benefits of this additional information and the estimated additional annualized cost of this alternative was $59.1 million. We did not select this alternative because we could not demonstrate that the added benefits would exceed the added costs.

c. *Covering all OTC drug products.* We considered requiring all OTC drug products to include bar coded information. This alternative is rejected because the additional costs do not appear to be justified by the expected benefits. At this time, most non-institutional settings are unlikely to have access to bar code reading systems. Therefore, we could not identify any significant reductions in ADEs due to this alternative. Including all OTC drug products would create estimated additional annualized costs to the manufacturing sector of $0.7 million. The expected annualized regulatory costs of the regulation therefore would increase from the current estimate of $8.4 million to $9.1 million with no additional quantifiable benefit.

d. *Exemption for small entities.* We considered exempting small entities, but rejected the alternative due to the modest projected impact of this initiative on small businesses and the lack of label standardization that would result. We will consider exemptions on

a product basis, not on the size of the affected entity.

e. *FDA selecting a specific symbology.* We considered requiring bar coded information with a specific symbology. The rationale for considering this option was to minimize uncertainty to hospitals in selecting systems that would be able to confidently read the specific language. We decided, however, that identifying a specific symbology might adversely impact future innovations in other machine-readable technologies. The selected alternative would allow individual facilities and suppliers to devise systems that would maximize their own internal efficiencies, as long as the standardized information could be accessed. The lack of consistent universal standards has been a major impediment to the use of this technology. As long as symbologies could be read within a single standard, however, the identified market failure would be overcome. In addition, the expected costs of this alternative would be much greater than the selected alternative. Annualized costs to manufacturers would increase to $19.0 million and significant costs would occur to the retail sector due to the need for accelerated upgrade or replacement of currently installed scanners. Retail pharmacies would incur annualized costs of $27.6 million. Consequently, we rejected the alternative of identifying a specific symbology.

3. Outreach

We conducted a public meeting on July 26, 2002, to solicit comments from the affected sectors. Interested parties from the health care sector, manufacturing sector, retail sector, and equipment suppliers provided comment and insight to the agency. In addition, we met with various industry groups in order to ensure viewpoints were appropriately considered. These insights affected the regulatory considerations, and additional outreach is planned during the regulatory process.

We also received over 190 comments on the proposed rule.

4. What Comments Did We Receive on Our Economic Analysis?

Several comments focused on the proposed rule's "Analysis of Impacts" discussion. The analysis summarized the rule's costs and benefits.

(Comment 76) The preamble to the proposed rule estimated that 4,229 packaging lines are used in 1,447 establishments (68 FR at 12519). One comment disagreed with this estimate. The comment, submitted by a medical gas firm, claimed that the rule would affect more than 1,000 members of the gases and welding distributors association and that 600 members package or distribute medical gases. The comment said there are approximately 10 major manufacturers of medical gas products in the United States, and many either own or control approximately 200 locations that repackage or distribute medical gas.

(Response) We agree that the proposed rule did not take this industry into account. However, because the final rule exempts medical gases from the bar code requirement, we do not need to adjust our analysis.

(Comment 77) The preamble to the proposed rule estimated the present value of the total costs to manufacturers, repackers, relabelers, and private label distributors as $33.2 million and average annualized costs of $3.2 million (68 FR 12520 through 12521).

Several comments claimed this estimate was too low. One comment from a medical gas firm said implementing the rule would cost $5 million for one firm and that annual maintenance and material costs cannot be accurately determined. The comment said that the cost to the medical gas industry alone would be over $100 million.

Two comments from allergenic extract firms also claimed high costs. One comment said that the firm would need to add 800 new NDC numbers and create new labels for its products. The comment claimed that the new labels would have to be printed by another company and it projected those costs as being $37,000 for required equipment and artwork, $39,000 for 640 hours of computer programming time to test and validate the new label format, $17,000 for inventory control, purchasing, and regulatory personnel time for internal control of each label and package change (based on an estimate of more than 530 hours at $31 per hour), $18,000 for changes in their standard operating procedure, and "unknown, but substantial" costs for locating a new vendor to prepare the new labels. The comment said these costs would be three or four times the firm's current $4,000 label costs and estimated its total costs as approximately $120,000. Another firm estimated its total cost as $166,500, excluding "unknown, but substantial hidden costs required due to the small nature of some of our final containers."

Three comments from pharmaceutical companies and a trade association also claimed the industry cost estimate was low. The comments said that manufacturers would have to purchase new or upgraded equipment to print high quality bar codes. One comment said that manufacturers would have to upgrade existing packaging equipment or buy new equipment, and those purchases would result in substantial investments that would exceed FDA's initial cost estimates.

(Response) We agree that specific firms will experience higher compliance costs than the average costs presented in the proposal and discussed in Reference 1 in the docket. However, ERG interviewed many companies, vendors, and industry consultants to arrive at their estimates of the incremental compliance costs for the affected industry. We agree that costs to medical gas and allergenic extract manufacturers were not explicitly accounted for in the proposal and that these industries are exempted from the final rule. We believe the methodology described in Reference 1 results in reasonable incremental costs of the final rule to industry. Our interviews with industry consultants have noted that many pharmaceutical manufacturers either currently use bar codes in their labels or are in the process of voluntarily applying bar codes. The costs attributable to the final rule are only those costs incurred in addition to voluntary costs. We disagree that the cost estimates to manufacturers, repackers, relabelers, and private label distributors do not reflect typical costs to typical firms.

(Comment 78) The preamble to the proposed rule estimated the regulatory costs to hospitals as being $6.1 million, with an average annualized cost of $0.6 million (68 FR 12521). One comment disagreed with this estimate, claiming that the rule would be very expensive for small State mental hospitals because manufacturers will pass on their costs to customers, and because wireless equipment (for reading the bar codes) will be even more expensive. The comment added that increases in package size will mean that automated drug dispensing machines will have to be stocked more frequently or small hospitals will have to carry more floor stock that is not controlled by such machines, which will reduce patient safety.

(Response) We disagree that the final rule will be very expensive for small hospitals. The final rule does not require small hospitals to invest in bar code technology, and we recognize that any such decision will be affected by individual circumstances. ERG did not find definitive evidence that regulatory costs are automatically passed on to customers, and we have analyzed these costs at the manufacturer level. In addition, we found no indication that

package sizes would definitely change as a result of this regulation. RSS symbology could be used so that no changes would occur in package size. We examined the impact of bar code technology on small hospitals as a sensitivity analysis.

(Comment 79) The preamble to the proposed rule mentioned that the American Hospital Association had stated that bar codes would help streamline payment, billing, and administrative systems and lead to efficient management of assets and resources (68 FR 12520).

One comment said that most inpatient reimbursement involves a high proportion of Medicare and Medicaid patients under a prospective payment or per diem basis, so increased accuracy of charge does not necessarily result in increased revenue. The comment said that costs associated with implementing bar code scanning would not be offset by increased reimbursement.

(Response) The comment may have misinterpreted the preamble to the proposed rule. We did not claim that bar codes would increase hospital revenue due to increased accuracy in billing. While we did present results that indicated the possibility of increased cost capture rates in the preamble, those distributive effects did not indicate reimbursement. Instead, the preamble to the proposed rule focused on cost savings in avoiding adverse drug events (68 FR at 12527), and we recognized that the estimated direct annual hospital cost saving of avoiding unnecessary treatment might not cover the costs of earlier investments. We stated that a hospital's decision to acquire and use bar code technology could be affected by the hospital's size. We only noted that increased reimbursement might be an additional benefit of the technology.

(Comment 80) The preamble to the proposed rule stated that the rule would result in premature replacement of scanners currently used in hospital pharmacies and treatment wards (68 FR at 12521). We estimated that the present value of the incremental costs of accelerated scanner replacement or upgrade to be approximately $13.7 million, with an average annualized cost to hospitals of early replacement of $1.3 million.

One comment claimed that the "half-life" of scanners is less that the proposed rule's 3-year implementation window. The comment claimed "at least half of all scanners currently in use will have been retired or replaced" by the time we would require all drugs to have a bar code. The comment said the remaining scanners would have some useful life remaining and could be used for other purposes.

(Response) We agree with this comment. The estimate of expected costs of replacing scanners in hospitals uses the expected useful life of scanners and the costs of upgrading current scanners. ERG estimated that scanners are replaced within 5 years. After the implementation period, scanners that do not have the capability to read RSS symbology that have not been replaced must be either replaced or upgraded. This was explained in Reference 1.

(Comment 81) One comment from a pharmaceutical manufacturer said that the health care system would not benefit if hospitals are forced to pay more for bar-coded products before they have systems in place to use those bar codes. The comment argued that hospitals should be able to keep buying OTC drugs at the lowest cost (usually the largest package size and without a bar code). The comment said this would let hospitals keep their costs down while they invest in bar code technology.

(Response) The comment misinterpreted the proposed rule. Neither the proposed rule nor the final rule requires hospitals to purchase only bar-coded OTC drugs. Hospitals will continue to be free to make purchasing decisions based on criteria that are best for individual facilities.

(Comment 82) One comment said that there was little analysis of the implementation costs on those who would use the bar codes other than to estimate that the speed of adoption will double. The comment said we should evaluate the implementation costs.

(Response) We disagree with this comment. ERG and FDA have conducted detailed analyses to estimate implementation costs to users. These analyses are available in Reference 1, in the docket for the proposed rule, and summarized in the Analysis of Impacts.

(Comment 83) The preamble to the proposed rule considered various regulatory alternatives, including selection of a specific symbology (68 FR 12529).

One comment supported requiring the use of DataMatrix, claiming that DataMatrix has a minimal cost difference to implement when compared with linear bar coding symbologies, and that such costs will continue to decline. The comment claimed that 70 percent of packaging lines are already DataMatrix capable, and this would allow implementation at the lowest cost and in the shortest time.

(Response) Although the comment discussed DataMatrix in the context of our economic analysis, the comment's focus is the use of DataMatrix rather than a linear bar code. We discuss issues regarding linear bar codes and other technologies, including DataMatrix, at comment 38, and we refer to our response there to explain why the final rule continues to require a linear bar code.

Q. Conclusion

We have examined the regulation and find that the expected benefits outweigh the costs and that the regulation would improve public health. Reference 1 provides a detailed analysis that includes references and support for the assumptions and estimates of this section.

R. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Eastern Research Group, "Impact of Final Bar Code Regulations for Drug and Biological Products," Contract Number 223–03–8500, Task Order Number 2, December 11, 2003.

2. Bates, D. W. et al., "Incidence of Adverse Drug Events and Potential Adverse Drug Events," *Journal of the American Medical Association*, 274:29–34, July 5, 1995.

3. Classen, D. C. et al., "Adverse Drug Events in Hospitalized Patients," *Journal of the American Medical Association*, 277:301–306, January 22 and 29, 1997.

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5. Senst, B. L. et al., "Practical Approach to Determining Costs and Frequency of Adverse Drug Events in a Health Care Network," *American Journal of Health-System Phamacy*, 58:1126–1132, June 15, 2001.

6. Leape, L. L. et al., "Systems Analysis of Adverse Drug Events," *Journal of the American Medical Association*, 274:35–43, July 5, 1995.

7. Sazama, K., "Reports of 355 Transfusion-Associated Deaths: 1976 Through 1985," *Transfusion*, 30:583–590, July 1990.

8. Callum, J. L. et al., "Reporting of Near-Miss Events for Transfusion Medicine: Improving Transfusion Safety," *Transfusion*, 41:1204–1211, October 2001.

9. Eastern Research Group, "Profile of Machine-Readable Technologies for Medical Applications," Contract Number 223–94–8031, in partial fulfillment of Task Order Number 8, November 29, 2001.

10. Coyle, G. A., "Bar Code Medication Administration: 5 Deal Breakers, Pearls, and Perils" Proceedings, Bar Code Medication Administration Conference (P. J. Schneider, ed.), Alaris@ Center for Medication Safety

and Clinical Improvement, San Diego CA, April 21-22, 2003.

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14. Rough, S., personal communication between S. Rough, Pharmacy Service Organization, University of Wisconsin Hospital and Clinics, and C. Franz of Eastern Research Group, April 22 and 23, 2002.

15. Churchill, W. W., site visit with W. W. Churchill, Director of Pharmacy Services, Brigham and Women's Hospital, Boston MA by J. Eyraud and C. Franz both of the Eastern Research Group, April 7, 2002.

16. Linden, J. V. et al., "A Report of 104 Transfusion Errors in New York State," *Transfusion*, 32:601–606, July 1992.

17. Gurwitz, J. H. et al., "Incidence and Preventability of Adverse Drug Events in Nursing Homes," *The American Journal of Medicine*, 109:87–94, August 1, 2000.

18. Barker, K. N. et al., "Medication Errors Observed in 36 Health Care Facilities," *Archives of Internal Medicine*, 162:1897–1903, September 9, 2002.

19. Jury Verdict Research, "Medical Malpractice Verdict and Settlement Study Released," *www.juryverdictresearch.com*, accessed February 27, 2003.

20. U. S. General Accounting Office, "Impact on Hospital and Physician Costs Extends Beyond Insurance," GAO/AIMD–95–169, September 1995.

21. American Hospital Association, "Medical Liability Crisis Affects Communities Access to Care," *www.hospitalconnect.com/aha*, accessed April 28, 2003.

22. U. S. Department of Health and Human Services, "Update on the Medical Litigation Crisis: Not the Result of the 'Insurance Cycle,' " Office of the Assistant Secretary for Planning and Evaluation, September 25, 2002.

23. Mello, M., personal communication between M. Mello, Assistant Professor of Health Policy and Law, Harvard University and R. Motwane of the Eastern Research Group, September 19, 2003.

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List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201, 606, and 610 are amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.25 is added to read as follows:

§ 201.25 Bar code label requirements.

(a) *Who is subject to these bar code requirements*? Manufacturers, repackers, relabelers, and private label distributors of a human prescription drug product or an over-the-counter (OTC) drug product that is regulated under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act are subject to these bar code requirements unless they are exempt from the registration and drug listing requirements in section 510 of the Federal Food, Drug, and Cosmetic Act.

(b) *What drugs are subject to these bar code requirements*? The following drug products are subject to the bar code label requirements:

(1) Prescription drug products, however:

(i) The bar code requirement does not apply to the following entities:

(A) Prescription drug samples;

(B) Allergenic extracts;

(C) Intrauterine contraceptive devices regulated as drugs;

(D) Medical gases;

(E) Radiopharmaceuticals; and

(F) Low-density polyethylene form fill and seal containers that are not packaged with an overwrap.

(ii) The bar code requirement does not apply to prescription drugs sold by a manufacturer, repacker, relabeler, or private label distributor directly to patients, but versions of the same drug product that are sold to or used in hospitals are subject to the bar code requirements.

(2) Biological products; and

(3) OTC drug products that are dispensed pursuant to an order and are commonly used in hospitals. For purposes of this section, an OTC drug product is "commonly used in hospitals" if it is packaged for hospital use, labeled for hospital use (or uses similar terms), or marketed, promoted, or sold to hospitals.

(c) *What does the bar code look like? Where does the bar code go*?

(1) Each drug product described in paragraph (b) of this section must have a bar code that contains, at a minimum, the appropriate National Drug Code (NDC) number in a linear bar code that meets European Article Number/Uniform Code Council (EAN.UCC) or Health Industry Business Communications Council (HIBCC) standards. Additionally, the bar code must:

(i) Be surrounded by sufficient blank space so that the bar code can be scanned correctly; and

(ii) Remain intact under normal conditions of use.

(2) The bar code must appear on the drug's label as defined by section 201(k) of the Federal Food, Drug, and Cosmetic Act.

(d) *Can a drug be exempted from the bar code requirement*?

(1) On our own initiative, or in response to a written request from a manufacturer, repacker, relabeler or private label distributor, we may exempt a drug product from the bar code label requirements set forth in this section. The exemption request must document why:

(i) compliance with the bar code requirement would adversely affect the safety, effectiveness, purity or potency of the drug or not be technologically feasible, and the concerns underlying the request could not reasonably be addressed by measures such as package redesign or use of overwraps; or

(ii) an alternative regulatory program or method of product use renders the bar code unnecessary for patient safety.

(2) Requests for an exemption should be sent to the Office of New Drugs (HFD-020), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (requests involving a drug product) or to the Office of Compliance and Biologics Quality (HFM-600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852 (requests involving a biological product).

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

■ 3. The authority citation for part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 4. Section 606.121 is amended by revising paragraph (c)(13) to read as follows:

§ 606.121 Container label.

* * * * *

(c) * * *

(13) The container label must bear encoded information in a format that is machine-readable and approved for use by the Director, Center for Biologics Evaluation and Research.

(i) *Who is subject to this machine-readable requirement*? All blood establishments that manufacture, process, repack, or relabel blood or blood components intended for transfusion and regulated under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

(ii) *What blood products are subject to this machine-readable requirement*? All blood and blood components intended for transfusion are subject to the machine-readable information label requirement in this section.

(iii) *What information must be machine-readable*? Each label must have machine-readable information that contains, at a minimum:

(A) A unique facility identifier;

(B) Lot number relating to the donor;

(C) Product code; and

(D) ABO and Rh of the donor.

(iv) *How must the machine-readable information appear*? The machine-readable information must:

(A) Be unique to the blood or blood component;

(B) Be surrounded by sufficient blank space so that the machine-readable information can be scanned correctly; and

(C) Remain intact under normal conditions of use.

(v) *Where does the machine-readable information go*? The machine-readable information must appear on the label of any blood or blood component which is or can be transfused to a patient or from which the blood or blood component can be taken and transfused to a patient.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 5. The authority citation for part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 6. Section 610.67 is added to read as follows:

§ 610.67 Bar code label requirements.

Biological products must comply with the bar code requirements at § 201.25 of this chapter. However, the bar code requirements do not apply to devices regulated by the Center for Biologics Evaluation and Research or to blood and blood components intended for transfusion. For blood and blood components intended for transfusion, the requirements at § 606.121(c)(13) of this chapter apply instead.

Dated: January 6, 2004.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: February 4, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 04–4249 Filed 2–25–04; 8:45 am]

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Federal Register

Thursday,
February 26, 2004

Part IV

Department of Education

Office of Innovation and Improvement; Overview Information; Excellence in Economic Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Excellence in Economic Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215B.

Dates:

Applications Available: February 26, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

Deadline for Intergovernmental Review: June 15, 2004.

Eligible Applicants: Any national nonprofit educational organization that has as its primary purpose the improvement of the quality of student understanding of personal finance and economics through effective teaching of economics in grades K–12 in the Nation's classrooms.

Applicants are required to submit evidence of their organization's eligibility.

Estimated Available Funds: $1,481,150.

Maximum Award: We will reject any application that proposes a budget exceeding $1,481,150 for a single budget period of twelve (12) months. The Deputy Under Secretary for Innovation and Improvement may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program promotes economic and financial literacy among all students in kindergarten through grade 12 through the award of one grant to a national nonprofit educational organization that has as its primary purpose the improvement of the quality of student understanding of personal finance and economics.

Priorities: This competition includes two absolute priorities and two invitational priorities that are explained in the following paragraphs.

In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from sections 5533(b), 5534(b), and 5535(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7267b–7267e).

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet both of these priorities.

These priorities are:

Absolute Priority 1—Direct Activities

A project must indicate how it would use 25 percent of the funds available each year to do *all* of the following activities:

(a) Strengthen and expand the grantee's relationships with State and local personal finance, entrepreneurial, and economic education organizations.

(b) Support and promote training of teachers who teach a grade from kindergarten through grade 12 regarding economics, including the dissemination of information on effective practices and research findings regarding the teaching of economics.

(c) Support research on effective teaching practices and the development of assessment instruments to document student understanding of personal finance and economics.

(d) Develop and disseminate appropriate materials to foster economic literacy.

Absolute Priority 2—Subgrant Activities

A project must indicate how it would use 75 percent of the funds available each year to award subgrants both to (a) State educational agencies (SEAs) or local educational agencies (LEAs), and (b) State or local economic, personal finance, or entrepreneurial education organizations.

(a) *Allowable Subgrantee Activities.* Applications must indicate that these subgrants are to be used to pay for the Federal share of the cost of enabling the subgrantees to work in partnership with *one or more* "eligible partners" as described elsewhere in this notice, for *one or more* of the following purposes:

(1) Collaboratively establishing and conducting teacher training programs that use effective and innovative approaches to the teaching of economics, personal finance, and entrepreneurship. The teacher training programs must—(i) train teachers who teach a grade from kindergarten through grade 12; and (ii) encourage teachers from disciplines other than economics and financial literacy to participate in such teacher training programs, if the training will promote the economic and financial literacy of those teachers' students.

(2) Providing resources to school districts that desire to incorporate economics and personal finance into the curricula of the schools in those districts.

(3) Conducting evaluations of the impact of economic and financial literacy education on students.

(4) Conducting economic and financial literacy education research.

(5) Creating and conducting school-based student activities to promote consumer, economic, and personal finance education (such as saving, investing, and entrepreneurial education) and to encourage awareness and student academic achievement in economics.

(6) Encouraging replication of best practices to promote economic and financial literacy.

(b) *Eligible partners for subgrantees under Absolute Priority 2.* Applications must indicate that subgrants will be made to an eligible subgrantee to work in partnership with one or more of the following entities:

(1) A private-sector entity.

(2) A State educational agency.

(3) A local educational agency.

(4) An institution of higher education.

(5) An organization promoting economic development.

(6) An organization promoting educational excellence.

(7) An organization promoting personal finance or entrepreneurial education.

(c) *Subgrant application process under Absolute Priority 2.* (1) Applications must describe the subgrant process the grantee will conduct prior to awarding subgrants.

(2) Applications must provide that the grantee will invite the following types of individuals to review all applications for subgrants and to make recommendations to the grantee on the approval of the applications:

(A) Leaders in the fields of economics and education.

(B) Other individuals as the grantee determines to be necessary, especially members of the State and local business, banking, and finance communities.

In addition to the two absolute priorities under this competition, we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2004 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one or both of these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Involvement of Business Community

The grantee and subgrantees are strongly encouraged to—

(a) Include interactions with the local business community to the fullest extent

possible to reinforce the connection between economic and financial literacy and economic development; and

(b) Work with private businesses to obtain matching contributions for Federal funds and assist subgrantees in working toward self-sufficiency.

Invitational Priority 2—Scientifically Based Evaluation

The grantee is strongly encouraged to propose an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of the project. The purpose of the priority is to allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, the project might use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project might use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and an extended series of observations of the outcome of interest precedes and follows the introduction of a new program or practice, regression discontinuity designs might be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships might be employed.

The proposed evaluation plan should describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on selection criteria. Ordinarily, this practice would have applied to the selection criteria in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority. This is the first Excellence in Economic Education program grant competition under the ESEA, as amended by the No Child Left Behind Act of 2001. In order to make timely grant awards, the Secretary has decided to forego public comment on the proposed selection criteria under section 473(d)(1) of GEPA. These selection criteria will apply to the FY 2004 grant competition only.

Program Authority: 20 U.S.C. 7267.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,481,150.

Maximum Award: We will reject any application that proposes a budget exceeding $1,481,150 for a single budget period of twelve (12) months. The Deputy Under Secretary for Innovation and Improvement may change the maximum amount through a notice published in the **Federal Register.**

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Any national nonprofit educational organization that has as its primary purpose the improvement of the quality of student understanding of personal finance and economics through effective teaching of economics in grades K–12 in the Nation's classrooms.

Applicants are required to submit evidence of their organization's eligibility.

2. *Cost Sharing or Matching: Subgrant Activities.* The recipients of each subgrant are required to match the Federal grant funds with an equal amount of non-Federal funding. The Federal share of each subgrant will be fifty (50) percent of the funded activities. The recipient of the subgrant must pay the other fifty percent in cash or in kind. In kind payment, including plant, equipment, or services, must be fairly evaluated. (20 U.S.C. 7267e(a) and (b)).

Supplement not supplant. Funds provided through this grant must be used to supplement, and not supplant, other Federal, State, and local funds expended to support activities that fulfill the purpose of this program. (20 U.S.C. 7267f).

IV. Application and Submission Information

1. *Address to Request Application Package:* Carolyn J. Warren, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502K, Washington, DC 20208–5645. Telephone: (202) 219–2206 or by e-mail: *carolyn.warren@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is strongly suggested that you limit the narrative of your application to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the evidence of eligibility, or the letters of support. However, *you must include all of the information addressing the selection criteria and the priorities in the narrative section of the application.*

3. *Submission Dates and Times:*

Applications Available: February 26, 2004. Deadline for Transmittal of Applications: April 16, 2004.

Note: We are requiring that applications for grants under this program be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information about how to access the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV, item 6, Other Submission Requirements, in this notice.

The application package for this program specifies the hours of operation of the e-Application Web site. If you are requesting a waiver of the electronic submission requirement, the dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are also in the application package.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 15, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Twenty-five (25) percent of the grant funds must be used for *Direct Activities* as described in Absolute Priority 1. (20 U.S.C. 7267b(b)(1)).

Seventy-five (75) percent of the grant funds must be used for *Subgrant Activities* as described in Absolute Priority 2. (20 U.S.C. 7267b(b)(2)).

The grantee and each subgrantee may use not more than five (5) percent of their grant funds for administrative costs. (20 U.S.C. 7267d(a)).

We reference regulations outlining other funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for grants under Excellence in Economic Education Program—CFDA Number 84.215B—be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Carolyn J. Warren, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502K, Washington, DC 20208–5645. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Excellence in Economic Education Program—CFDA Number 84.215B—is one of the programs included in the pilot project. If you are an applicant under Excellence in Economic Education Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time

during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Excellence in Economic Education Program at *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are as follows:

1. Quality of the Project Design—20 Points

In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project represents an exceptional approach to the priorities established for the competition.

2. Quality of Project Services—30 Points

In determining the quality of the project services of the proposed project, the Secretary considers the following factors:

(a) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(b) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(c) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

3. Quality of the Management Plan—20 Points

In determining the quality of the management plan of the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

4. Quality of Project Personnel—10 Points

In determining the quality of the project personnel of the proposed project, the Secretary considers the qualifications, including relevant training and experience, of the project director and key personnel.

5. Quality of Project Evaluation—20 Points

In determining the quality of the evaluation plan of the proposed project, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: The Department notes that the grantee can, as authorized by section 5533(a)(2)(C) of the ESEA, award subgrants to conduct evaluations and to collect the information needed for implementation of the performance measure discussed elsewhere in this notice.

Factors Applicants May Wish To Consider in Developing an Evaluation Plan. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should, where possible, identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating:

(1) What types of data will be collected.

(2) When various types of data will be collected.

(3) What methods will be used.

(4) What instruments will be developed and when.

(5) How the data will be analyzed.

(6) When reports of results and outcomes will be available.

(7) How the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings.

Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The percentage of students of teachers trained under the grant project that demonstrate an improved understanding of personal finance and economics as compared to similar students whose teachers have not had the training provided by this project. The grantee under this program will be required to collect and report these data to the Department, and applicants are strongly encouraged to design their proposed project evaluations around this performance measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carolyn J. Warren, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502K, Washington, DC 20208–5645. Telephone: (202) 219–2206 or by e-mail: *carolyn.warren@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *www.gpoaccess.gov/nara/index.html.*

Dated: February 20, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–4298 Filed 2–25–04; 8:45 am]

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Federal Register

Thursday,
February 26, 2004

Part V

The President

Executive Order 13329—Encouraging Innovation in Manufacturing

Federal Register
Vol. 69, No. 38
Thursday, February 26, 2004

Presidential Documents

Title 3—

The President

Executive Order 13329 of February 24, 2004

Encouraging Innovation in Manufacturing

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, as amended (15 U.S.C. 631 *et seq.*), and to help ensure that Federal agencies properly and effectively assist the private sector in its manufacturing innovation efforts, it is hereby ordered as follows:

Section 1. *Policy.* Continued technological innovation is critical to a strong manufacturing sector in the United States economy. The Federal Government has an important role, including through the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, in helping to advance innovation, including innovation in manufacturing, through small businesses.

Sec. 2. *Duties of Department and Agency Heads.* The head of each executive branch department or agency with one or more SBIR programs or one or more STTR programs shall:

(a) to the extent permitted by law and in a manner consistent with the mission of that department or agency, give high priority within such programs to manufacturing-related research and development to advance the policy set forth in section 1 of this order; and

(b) submit reports annually to the Administrator of the Small Business Administration and the Director of the Office of Science and Technology Policy concerning the efforts of such department or agency to implement subsection 2(a) of this order.

Sec. 3. *Duties of Administrator of the Small Business Administration.* The Administrator of the Small Business Administration:

(a) shall establish, after consultation with the Director of the Office of Science and Technology Policy, formats and schedules for submission of reports by the heads of departments and agencies under subsection 2(b) of this order; and

(b) is authorized to issue to departments and agencies guidelines and directives (in addition to the formats and schedules under subsection 3(a)) as the Administrator determines from time to time are necessary to implement subsection 2(a) of this order, after such guidelines and directives are submitted to the President, through the Director of the Office of Science and Technology Policy, for approval and are approved by the President.

Sec. 4. *Definitions.* As used in this order:

(a) "Small Business Innovation Research (SBIR) program" means a program to which section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)(4)) refers;

(b) "Small Business Technology Transfer (STTR) program" means a program to which section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)(6)) refers;

(c) "research and development" means an activity set forth in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5)); and

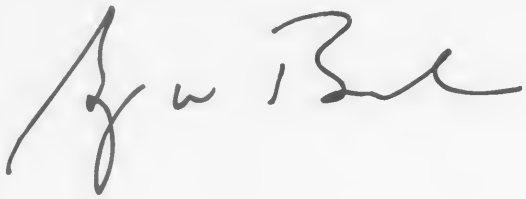
(d) "manufacturing-related" means relating to: (i) manufacturing processes, equipment and systems; or (ii) manufacturing workforce skills and protection.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect the authority of the Director of the Office

of Management and Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including Executive Order 12958 of April 17, 1995, as amended.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 24, 2004.

[FR Doc. 04–4436
Filed 2–25–04; 8:45 am]
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Federal Register

Thursday,
February 26, 2004

Part VI

The President

Executive Order 13330—Human Service Transportation Coordination

Federal Register
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Thursday, February 26, 2004

Presidential Documents

Title 3—

The President

Executive Order 13330 of February 24, 2004

Human Service Transportation Coordination

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to enhance access to transportation to improve mobility, employment opportunities, and access to community services for persons who are transportation-disadvantaged, it is hereby ordered as follows:

Section 1. This order is issued consistent with the following findings and principles:

(a) A strong America depends on citizens who are productive and who actively participate in the life of their communities.

(b) Transportation plays a critical role in providing access to employment, medical and health care, education, and other community services and amenities. The importance of this role is underscored by the variety of transportation programs that have been created in conjunction with health and human service programs, and by the significant Federal investment in accessible public transportation systems throughout the Nation.

(c) These transportation resources, however, are often difficult for citizens to understand and access, and are more costly than necessary due to inconsistent and unnecessary Federal and State program rules and restrictions.

(d) A broad range of Federal program funding allows for the purchase or provision of transportation services and resources for persons who are transportation-disadvantaged. Yet, in too many communities, these services and resources are fragmented, unused, or altogether unavailable.

(e) Federally assisted community transportation services should be seamless, comprehensive, and accessible to those who rely on them for their lives and livelihoods. For persons with mobility limitations related to advanced age, persons with disabilities, and persons struggling for self-sufficiency, transportation within and between our communities should be as available and affordable as possible.

(f) The development, implementation, and maintenance of responsive, comprehensive, coordinated community transportation systems is essential for persons with disabilities, persons with low incomes, and older adults who rely on such transportation to fully participate in their communities.

Sec. 2. *Definitions.* (a) As used in this order, the term "agency" means an executive department or agency of the Federal Government.

(b) For the purposes of this order, persons who are transportation-disadvantaged are persons who qualify for Federally conducted or Federally assisted transportation-related programs or services due to disability, income, or advanced age.

Sec. 3. *Establishment of the Interagency Transportation Coordinating Council on Access and Mobility.* (a) There is hereby established, within the Department of Transportation for administrative purposes, the "Interagency Transportation Coordinating Council on Access and Mobility" ("Interagency Transportation Coordinating Council" or "Council"). The membership of the Interagency Transportation Coordinating Council shall consist of:

(i) the Secretaries of Transportation, Health and Human Services, Education, Labor, Veterans Affairs, Agriculture, Housing and Urban Development, and the Interior, the Attorney General, and the Commissioner of Social Security; and

(ii) such other Federal officials as the Chairperson of the Council may designate.

(b) The Secretary of Transportation, or the Secretary's designee, shall serve as the Chairperson of the Council. The Chairperson shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist exclusively of the Council's members.

(c) A member of the Council may designate any person who is part of the member's agency and who is an officer appointed by the President or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS–15 of the General Schedule to perform functions of the Council or its subgroups on the member's behalf.

Sec 4. *Functions of the Interagency Transportation Coordinating Council.* The Interagency Transportation Coordinating Council shall:

(a) promote interagency cooperation and the establishment of appropriate mechanisms to minimize duplication and overlap of Federal programs and services so that transportation-disadvantaged persons have access to more transportation services;

(b) facilitate access to the most appropriate, cost-effective transportation services within existing resources;

(c) encourage enhanced customer access to the variety of transportation and resources available;

(d) formulate and implement administrative, policy, and procedural mechanisms that enhance transportation services at all levels; and

(e) develop and implement a method for monitoring progress on achieving the goals of this order.

Sec. 5. *Report.* In performing its functions, the Interagency Transportation Coordinating Council shall present to me a report not later than 1 calendar year from the date of this order. The report shall:

(a) Identify those Federal, State, Tribal and local laws, regulations, procedures, and actions that have proven to be most useful and appropriate in coordinating transportation services for the targeted populations;

(b) Identify substantive and procedural requirements of transportation-related Federal laws and regulations that are duplicative or restrict the laws' and regulations' most efficient operation;

(c) Describe the results achieved, on an agency and program basis, in: (i) simplifying access to transportation services for persons with disabilities, persons with low income, and older adults; (ii) providing the most appropriate, cost-effective transportation services within existing resources; and (iii) reducing duplication to make funds available for more services to more such persons;

(d) Provide recommendations to simplify and coordinate applicable substantive, procedural, and administrative requirements; and

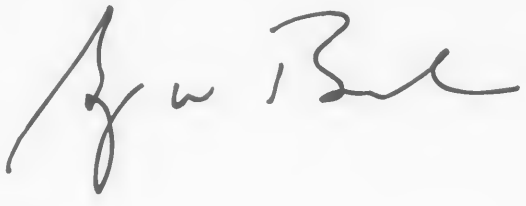
(e) Provide any other recommendations that would, in the judgment of the Council, advance the principles set forth in section 1 of this order.

Sec. 6. *General.* (a) Agencies shall assist the Interagency Transportation Coordinating Council and provide information to the Council consistent with applicable law as may be necessary to carry out its functions. To the extent permitted by law, and as permitted by available agency resources, the Department of Transportation shall provide funding and administrative support for the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any

right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
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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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Solid wastes:
- Hazardous waste; identification and listing—
  - Exclusions; published 2-26-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Rhode Island; published 2-26-04

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Santa Ana sucker; published 2-26-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 2-11-04
- Boeing; published 2-26-04

Standard instrument approach procedures; published 2-26-04

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—
- California; comments due by 3-5-04; published 1-6-04 [FR 04-00169]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Pine shoot beetle; comments due by 3-5-04; published 1-5-04 [FR 04-00080]

Plant-related quarantine, domestic:
- Golden nematode; comments due by 3-5-04; published 1-5-04 [FR 04-00079]
- Karnal bunt; comments due by 3-5-04; published 1-5-04 [FR 04-00078]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Loan and purchase programs:
- Conservation Security Program; comments due by 3-2-04; published 1-2-04 [FR 03-31916]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Bonds and notes issued for electrification or telephone purposes; guarantees; comments due by 3-1-04; published 12-30-03 [FR 03-31928]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - General limitations; comments due by 3-1-04; published 1-29-04 [FR 04-01810]
  - Individual Fishing Quota Program; halibut, sablefish, and groundfish; comments due by 3-1-04; published 1-29-04 [FR 04-01938]
  - Pollock; comments due by 3-5-04; published 2-19-04 [FR 04-03625]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Offshore marine aquaculture; meetings; comments due by 3-5-04; published 2-13-04 [FR 04-03283]
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 3-3-04; published 2-17-04 [FR 04-03392]
  - Domestic fisheries; exempted fishing permit applications; comments due by 3-3-04; published 2-17-04 [FR 04-03391]

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - King mackerel and reef fish; meetings; comments due by 3-5-04; published 2-13-04 [FR 04-03282]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Unique item identification and valuation; comments due by 3-1-04; published 12-30-03 [FR 03-31951]
- Unique item identification and valuation; correction; comments due by 3-1-04; published 1-2-04 [FR C3-31951]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 3-3-04; published 2-2-04 [FR 04-01966]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-5-04; published 2-4-04 [FR 04-02264]
- Florida; comments due by 3-1-04; published 1-30-04 [FR 04-01977]
- New Hampshire; comments due by 3-3-04; published 2-2-04 [FR 04-02067]
- South Carolina; comments due by 3-1-04; published 1-29-04 [FR 04-01818]
- Tennessee; comments due by 3-3-04; published 2-2-04 [FR 04-01970]

Disadvantaged Business Enterprise Program; participation by businesses in procurement under financial assistance agreements
- Hearing; comments due by 3-4-04; published 2-11-04 [FR 04-02957]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Cyprodinil; comments due by 3-1-04; published 12-31-03 [FR 03-32061]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Fluroxypyr; comments due by 3-1-04; published 12-31-03 [FR 03-32007]

Superfund program:
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  - National priorities list update; comments due by 3-1-04; published 1-29-04 [FR 04-01543]
  - National priorities list update; comments due by 3-1-04; published 1-29-04 [FR 04-01544]

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- Satellite communications—
  - Coordination between non-geostationary and geostationary satellite orbit; comments due by 3-3-04; published 2-2-04 [FR 04-01991]

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Medical devices:
- Dental devices—
  - Gold based alloys, precious metal alloys and base metal alloys; special controls designation; comments due by 3-1-04; published 12-1-03 [FR 03-29739]

Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

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S. 610/P.L. 108–201

NASA Flexibility Act of 2004 (Feb. 24, 2004; 118 Stat. 461)

Last List February 18, 2004

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