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3–26–01 Monday
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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: Tuesday, April 17, 2001 at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 2078–00; AG Order No. 2411–2001]

RIN 1115–AF91

Adjustment of Status To That Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Justice (Department) is amending its regulations governing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act (Act) to conform the regulations to existing policy and procedures and to remove language that has been superseded by subsequent legislation. Specifically, this interim rule conforms the regulations to include the changes made by the Departments of Commerce, State, Justice and the Judiciary Appropriations Act of 1998 and the Legal Immigration Family Equity Act Amendments of 2000. This rule adds the new sunset date of April 30, 2001, for the filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) of the Act, clarifies the effect of the new sunset date on eligibility, and discusses motions to reopen. This means that in order to preserve the ability to apply for adjustment of status under section 245(i), an alien must be the beneficiary of a visa petition for classification under section 204 of the Act that was filed with the Attorney General, or an application for labor certification properly filed with the Secretary of Labor, on or before April 30, 2001, and determined to have been approvable when filed. This rule also provides guidance on the standard for review of immigrant visa petitions and applications for labor certification filed on or before April 30, 2001.

DATES: *Effective date.* This rule is effective March 26, 2001.

Comment date. Comments must be submitted on or before May 25, 2001.

ADDRESSES: For matters relating to the Immigration and Naturalization Service (Service), please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536, or via fax to (202) 305–0143. To ensure proper handling, please reference INS number 2078–00 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment. For matters relating to the Executive Office for Immigration Review (EOIR), please submit written comments to Charles Adkins-Blanch, General Counsel, EOIR, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, or via fax to (703) 305–0443. To ensure proper handling, please reference INS number 2078–00 on your correspondence.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Service, contact Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

For questions regarding EOIR, contact Charles Adkins-Blanch, General Counsel, EOIR, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, Telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

What Is Section 245 of the Act?

Section 245 of the Act (8 U.S.C. 1255) allows the Attorney General, in his discretion, to adjust the status of an alien who has an immigrant visa immediately available to that of a lawful permanent resident (LPR) while the alien remains in the United States in lieu of applying for an immigrant visa at a U.S. consular office abroad, if certain conditions are met. An alien must have been inspected and admitted or paroled, be eligible for an immigrant visa and admissible for permanent residence and, with some exceptions, have maintained lawful nonimmigrant status. The alien must not have engaged in unauthorized employment.

What Is Section 245(i) of the Act?

Section 245(i) of the Act (8 U.S.C. 1255(i)) allows certain aliens with an immigrant visa immediately available to them to apply to adjust status upon payment of a $1,000 surcharge, even though the alien entered the United States without inspection or does not meet the maintenance of status and authorized employment requirements of section 245(c) of the Act (8 U.S.C. 1255(c)). Section 245(i) of the Act does not excuse any grounds of inadmissibility under section 212(a) of the Act (8 U.S.C. 1182(a)).

The Departments of Commerce, State, Justice and the Judiciary Appropriations Act of 1998, Public Law 105–119, section 111 (111 Stat. at 2458) (1997), significantly revised Section 245(i) and set a January 14, 1998, sunset date. After January 14, 1998, an alien could file an application for adjustment of status under Section 245(i) of the Act only if that alien was the beneficiary of either (1) an immigrant visa petition under Section 204 of the Act (8 U.S.C. 1154) that was filed with the Attorney General on or before January 14, 1998; or (2) an application for labor certification that was filed pursuant to the regulations of the Secretary of Labor by the alien's employer on or before that date. Such a visa petition or application for labor certification served to "grandfather" the alien beneficiary (that is, to preserve the alien's ability to file an application for adjustment of status under Section 245(i)) if the visa petition or application for labor certification was properly filed on or before the sunset date, under the appropriate regulations, and was approvable when filed.

What Changes Were Made by the Most Recent Amendments to Section 245(i)?

The Legal Immigration Family Equity Act Amendments of 2000, Title XV of Public Law 106–554, section 1502 (114 Stat. at 2764) (enacted Dec. 21, 2000) (the LIFE Act Amendments) extended the Section 245(i) (8 U.S.C. 1255(i)) sunset date from January 14, 1998, to April 30, 2001. That Act also requires

that, if the qualifying visa petition or labor certification application was filed after January 14, 1998, the alien must have been physically present in the United States on the date of enactment (December 21, 2000) to be eligible to apply for adjustment of status under Section 245(i).

What Does This Rule Do?

The previous regulations relating to Section 245(i) of the Act (8 U.S.C. 1255(i)), 8 CFR 245.10, were never amended to conform to the 1997 statutory changes to Section 245(i). The Department had developed a set of guidelines to implement Section 245(i) for aliens who were grandfathered (i.e., who were the beneficiaries of qualifying visa petitions or labor certification applications filed by the sunset date). In view of the changes made by the LIFE Act Amendments and the apparent intention of Congress to apply the amended law consistently with past interpretations, this rule is intended to conform § 245.10 to the existing standards and to implement the new physical presence requirement. The rule also eliminates provisions from the existing regulation that have been obsolete since the 1997 amendments to Section 245(i).

How Does an Alien Become Grandfathered for Purposes of Section 245(i) of the Act?

To be grandfathered for purposes of Section 245(i) of the Act (8 U.S.C. 1255(i)), the alien must be the beneficiary of an immigrant visa petition or a labor certification application that (1) is filed on or before April 30, 2001, and (2) meets the requirements of the Act and these regulations. A visa petition or labor certification application that meets all of the applicable requirements so as to grandfather the alien beneficiary is referred to as a qualifying visa petition or a qualifying labor certification application. In addition, if the qualifying petition or qualifying application was filed after January 14, 1998, the alien beneficiary must also have been physically present in the United States on December 21, 2000, to be eligible to apply for adjustment under Section 245(i). The physical presence requirement is discussed later.

Since Section 245(i) was amended in 1997, the Department has adopted what has come to be known as an "alien-based" reading of Section 245(i). This means that the alien is grandfathered by the filing of a qualifying visa petition or qualifying labor certification application, for purposes of preserving the alien's eligibility to apply to adjust status under Section 245(i), but the alien is not limited to that particular petition or application as the only possible basis for adjustment of status. The qualifying petition or application that grandfathers the alien serves to preserve the alien's opportunity to file for adjustment of status under Section 245(i) at a later time, at which point the grandfathered alien becomes eligible for adjustment of status on any proper basis.

For example, if an alien is properly grandfathered as the beneficiary of a qualifying visa petition or qualifying application that was filed on or before April 30, 2001, the alien would also be eligible to adjust status under Section 245(i) if he or she later won a diversity visa.

Are the Dependent Family Members of a Grandfathered Alien Also Considered To Be Grandfathered?

Yes, a dependent spouse or child (if eligible under section 203(d) of the Act (8 U.S.C. 1153(d))) who is accompanying or following to join a grandfathered alien is also considered to be grandfathered by the qualifying petition or qualifying application for labor certification, if the relationship exists before the principal alien adjusts his or her status.

What Documents Must Be Filed on or Before April 30, 2001?

The new sunset date of April 30, 2001, is the deadline for the filing of a qualifying visa petition or qualifying labor certification application in order to grandfather the alien beneficiary. To preserve the alien's ability to apply in the future for adjustment of status under Section 245(i) (8 U.S.C. 1255(i)), an alien must be the beneficiary of either (1) a qualifying Section 204 of the Act (8 U.S.C. 1154) immigrant visa petition that is properly filed with the Attorney General on or before April 30, 2001, and which is determined to have been approvable when filed; or (2) a qualifying application for labor certification that is properly filed on or before April 30, 2001, according to the regulations of the Secretary of Labor, and which is determined to have been approvable when filed.

An alien is not required to file his or her application for adjustment of status under Section 245(i) on or before April 30, 2001. If an alien is grandfathered (because he or she is the beneficiary of a qualifying visa petition or qualifying labor certification application filed on or before April 30, 2001), the alien will be able to submit the actual application for adjustment of status under Section 245(i) at any later time when an immigrant visa becomes available to the alien.

What Are the Requirements for a Qualifying Immigrant Visa Petition?

An alien becomes grandfathered for purposes of Section 245(i) of the Act (8 U.S.C. 1255(i)) if he or she is the beneficiary of an immigrant visa petition under Section 204 of the Act (8 U.S.C. 1154) on his or her behalf that is properly filed with the Service on or before April 30, 2001. This includes any of the following:

- Form I–130, Petition for Alien Relative, filed on behalf of the alien beneficiary;
- Form I–140, Immigrant Petition for Alien Worker, filed by an employer on behalf of the beneficiary;
- Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on behalf of the beneficiary or submitted as a self-petition under Section 204(a)(1)(A)(iii) or (a)(1)(A)(iv) filed by an eligible alien; and
- Form I–526, Immigrant Petition by Alien Entrepreneur.

In any case, the visa petition must be determined to have been approvable when filed in order to grandfather the alien for purposes of Section 245(i), as discussed below.

A visa petition does not serve to grandfather the alien beneficiary if that alien has previously obtained lawful permanent resident status on the basis of that visa petition.

Other types of applications or petitions for immigration benefits—including but not limited to asylum applications, diversity visa applications, and diversity visa lottery-winning letters—do not serve to grandfather an alien for purposes of Section 245(i), because they do not satisfy the statutory requirement that the alien must be the beneficiary of a qualifying immigrant visa petition for classification under Section 204 of the Act filed with the Attorney General or a qualifying labor certification application filed with the Secretary of Labor. Under current law, unless an alien is properly grandfathered as the beneficiary of a qualifying visa petition or qualifying application that was properly filed on or before April 30, 2001, the alien will not be able to take advantage of Section 245(i) even if he or she becomes eligible for an immigrant visa at some later date.

When Is an Immigrant Visa Petition "Properly Filed on or Before April 30, 2001"?

To be considered properly filed, for purposes of grandfathering, the immigrant visa petition must be physically received by the Service prior

to the close of business on or before April 30, 2001, or if mailed, be postmarked on or before April 30, 2001.

The Service is applying the exception for grandfathering visa petitions contained in the regulations at 8 CFR § 103.2(a)(7), which require that a petition must be physically received and stamped by the Service in order to be considered properly filed. For the purpose of grandfathering under section 245(i) of the Act (8 U.S.C. 1255(i)) only, the Service will accept as properly filed, visa petitions that are postmarked on or before April 30, 2001. In addition, given the April 30, 2001, sunset date, the Service notes that it will accept visa petitions that contain at least the minimum amount of information required by 8 CFR 103.2(a). Petitions that do not contain the names of the petitioner and the beneficiary, the proper fee, and the signature of the petitioner will not be accepted for filing.

When Is an Immigrant Visa Application "Approvable When Filed" for Grandfathering Purposes?

Not all immigrant visa petitions that are properly filed on or before April 30, 2001, will serve to grandfather the alien beneficiary for purposes of Section 245(i) of the Act (8 U.S.C. § 1255(i)). In interpreting the language of Section 245(i) since it was amended in 1997, the Department has also required that the visa petition must have been "approvable when filed" to qualify the alien beneficiary for grandfathering.

"Approvable when filed" means that, as of the date of filing the immigrant visa petition, the petition was properly filed, meritorious in fact, and non-frivolous ("frivolous" meaning patently without substance). For example, a visa petition is not approvable when filed if it is fraudulent or if the named beneficiary did not have, at the time of filing, the appropriate family relationship or employment relationship that would support the issuance of an immigrant visa.

As noted, the Department recognizes that some immigrant visa petitions may be filed initially without all of the necessary information for the Service to adjudicate the petition. In that case, the existing regulations at 8 CFR 103.2(b)(8) provide a process for the Service to request additional evidence and to allow the petitioner a period of 12 weeks to submit that additional evidence in support of the petition.

It is important to note, though, that all eligibility requirements must be satisfied before an immigrant visa petition can be approved. A visa petition will not qualify an alien for grandfathering unless the Service is able to determine, based on the available information (including additional evidence submitted by the petitioner after the filing of the petition) that the petition was approvable when filed.

If the Deparment has already approved the visa petition at the time the alien files an application for adjustment of status, it was approvable when filed, except as discussed below, and thus provides a basis for grandfathering. However, a visa petition may still serve as the basis for grandfathering even if it has not been adjudicated by the Service as of April 30, 2001. As discussed below, the adjudication of the visa petition on the merits is distinct from the question of whether the petition qualifies for grandfathering because it was approvable when filed.

What if an Immigrant Visa Petition Is Properly Filed on or Before April 30, 2001, but Is Later Denied, Withdrawn, or Revoked?

An immigrant visa petition on behalf of an alien beneficiary that is properly filed on or before April 30, 2001, but is subsequently denied or withdrawn, or the approval of which is revoked, may still serve to grandfather the alien, depending on the reasons for the disposition of the visa petition. The issue is whether the visa petition was approvable when filed.

Changed Circumstances Arising After the Time of Filing

As long as a qualifying visa petition was approvable when filed, the petition will still grandfather the alien even if the petition was denied or revoked due to circumstances arising after the filing of the petition as outlined at 8 CFR § 205.1(a)(3)(i) or (ii). Such changed circumstances would include but are not limited to a child who has reached age 21 before the principal alien could adjust status, an employer going out of business, or a valid, bona fide marriage ending in divorce before the alien could adjust status.

These same principles apply where the petitioner withdraws an immigrant visa petition. For example, an employer that had filed an immigrant visa petition for an alien may suffer a business reversal 18 months after the date of filing and, as a result, withdraw the petition. In that case, the alien would still continue to be grandfathered for purposes of Section 245(i) of the Act, if the petition was approvable at the time of filing.

Under the "alien-based" reading, a grandfathered alien is not limited to filing for adjustment of status using the particular visa petition that provided the basis for grandfathering. Thus, a properly grandfathered alien with a petition that was denied or revoked due to circumstances arising after the filing of the petition may apply to adjust status using any other proper basis for adjustment. Although grandfathered by the denied or revoked petition, the alien may not use that petition as an adjustment basis, given that the petition was not approved.

Immigrant Visa Petitions Denied or Revoked Based on Ineligibility

When the Service has denied an immigrant visa petition (or has revoked a prior approval) based on ineligibility at the time of filing, the petition does not qualify to grandfather the alien beneficiary for purposes of section 245(i). Such ineligibility may be based on meritless or fraudulent petitions, such as those in which the claimed family or employment relationship at the time of the filing cannot serve as the basis for issuance of an immigrant visa.

When Is a Labor Certification Application "Properly Filed on or Before April 30, 2001"?

To be considered properly filed, for purposes of grandfathering under Section 245(i) of the Act (8 U.S.C. 1255(i)), a labor certification application must be filed on or before April 30, 2001, according to the regulations established by the Department of Labor, 20 CFR 656.21. The sponsoring employer must properly complete and sign ETA Form 750, Parts A and B. The Labor Department considers an application for labor certification that is filed and accepted at a State Employment Security Agency (SESA) to be properly filed.

What Happens if an Employer Substitutes a New Beneficiary on a Labor Certification Application After April 30, 2001?

Only the alien who was the beneficiary of an application for labor certification on or before April 30, 2001, will be considered to be grandfathered for purposes of Section 245(i) of the Act (8 U.S.C. 1255(i)).

When Is an Application for Labor Certification "Approvable When Filed" for Grandfathering Purposes?

Not all applications for labor certification that are properly filed on or before April 30, 2001, will serve to grandfather the alien beneficiary for purposes of Section 245(i) of the Act (8 U.S.C. 1255(i)). In interpreting the language of Section 245(i) since it was amended in 1997, the Department has also required that the application for

labor certification must have been "approvable when filed" to qualify the alien beneficiary for grandfathering.

"Approvable when filed" means that, as of the date of filing of the application for labor certification, the application was properly filed, meritorious in fact, and non-frivolous ("frivolous" meaning patently without substance).

What Happens if an Alien Is Already in Immigration Proceedings?

If an alien is already in immigration proceedings and believes that he or she may be eligible to apply to adjust status under Section 245(i) of the Act (8 U.S.C. 1255(i)), he or she should raise the matter with the Immigration Judge or the Board of Immigration Appeals according to the established procedures. Certain aliens in exclusion proceedings and certain arriving aliens, however, cannot apply for Section 245(i) adjustment.

If an Alien Already Is the Subject of a Final Order of Removal, Deportation or Exclusion, What is the Procedure for Moving To Reopen Based on Section 245(i)?

The LIFE Act Amendments contain no special provisions for reopening cases under Section 245(i) of the Act (8 U.S.C. 1255(i)) where an alien already is the subject of a final order of removal, deportation or exclusion. Accordingly, motions to reopen based on Section 245(i) will be governed by the Department's current rules regarding motions to reopen, 8 CFR 3.23 (before the Immigration Judge) and 3.2 (before the Board of Immigration Appeals), which contain time and numerical limitations on the filing of such motions. See 8 CFR 3.23(b)(1) and 3.2(c)(2). The rules, however, do provide for limited exceptions to these time and numerical limitations, among which is a motion to reopen filed jointly by the alien and the Service counsel in the case. Therefore, an alien who is the subject of a final order who alleges eligibility for adjustment of status under Section 245(i) may contact the Service counsel to request the filing of a joint motion to reopen. The Service will exercise its discretion in reviewing these cases. However, there are provisions in the Immigration and Nationality Act which limit the Attorney General's ability to grant certain forms of discretionary relief, including adjustment of status, for a period of time, to particular categories of aliens with final orders, including but not limited to aliens whose orders were entered in absentia for failure to appear, and aliens who failed to voluntarily depart the United States within the time period specified.

How is an Alien's Nonimmigrant Status in the United States Affected if he or she is Grandfathered?

An alien's nonimmigrant status in the United States is not affected by the fact that he or she is grandfathered. The petition that serves to grandfather the alien neither extends an alien's nonimmigrant status nor authorizes employment in the United States. The immigrant visa petition or application for labor certification that serves to grandfather the alien does not serve to stay any order of removal, deportation, or exclusion.

What Effect Does a Grandfathering Petition Have on an Alien's Unlawful Presence in the United States if he or she Has Entered Without Inspection or Remained Beyond the Authorized Period of Admission?

The mere filing of a visa petition or application for a labor certification that has the effect of grandfathering the alien has no effect on an alien's unlawful presence in the United States and does not place the alien in a "period of stay authorized by the Attorney General" for purposes of section 212(a)(9)(B) of the Act (8 U.S.C. 1182(a)(9)(B)). Absent some other factor placing the alien in such a period of authorized stay, the alien continues to accrue periods of unlawful presence until he or she properly files an application for adjustment of status. A properly filed application for adjustment of status under Section 245(i) of the Act (8 U.S.C. 1255(i)) places the alien in a "period of stay authorized by the Attorney General" for purposes of section 212(a)(9)(B) and (C) of the Act (8 U.S.C. 1182(a)(9)(B) and (C)).

Filing an application for adjustment of status stops the accrual of unlawful presence, but does not eliminate periods of unlawful presence accrued before such filing.

When Is an Alien Applying for Adjustment of Status Under Section 245(i) Required to Demonstrate Physical Presence in the United States?

If an alien is the beneficiary of a qualifying immigrant visa petition, or qualifying application for labor certification, that was filed after January 14, 1998, then the alien must have been physically present in the United States on December 21, 2000, to be eligible to use Section 245(i) of the Act (8 U.S.C. 1255(i)). The physical presence requirement does not apply if the qualifying petition or application was filed on or before January 14, 1998, regardless of when the Section 245(i) application for adjustment of status itself is filed.

Proof of a grandfathered alien's physical presence is not required to be presented when a visa petition or labor certification application is filed; such proof must be presented when the alien files the Section 245(i) application for adjustment of status itself.

How Can an Applicant Demonstrate That he or she Was Physically Present in the United States on December 21, 2000?

Applicants for adjustment under Section 245(i) of the Act (8 U.S.C. 1255(i)) who are covered by the physical presence requirement must submit, at the time they file the Section 245(i) application for adjustment of status, evidence that they were physically present in the United States on December 21, 2000.

The Act is silent as to the methods by which an applicant may demonstrate his or her physical presence in the United States on that date. This rule provides guidance as to what evidence an applicant may submit to prove physical presence in the United States on December 21, 2000. This guidance largely corresponds to the existing regulations at 8 CFR 245.15(i) for aliens who must demonstrate physical presence on a specific date for purposes of the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA). The rule will incorporate, in part, the forms of documentation accepted in HRIFA regarding physical presence (8 CFR 245.15(i) and (j)(2)) and adopt them as examples of possible proof of physical presence for section 245(i). The Department is also soliciting comments on what type of evidence can be best utilized to demonstrate physical presence on December 21, 2000.

In some cases, a single document may suffice to establish the applicant's physical presence on December 21, 2000. In most cases, however, the alien may need to submit several documents, because most applicants may not possess documentation that contains the exact date of December 21, 2000. In such instances, the applicant should submit sufficient documentation establishing the applicant's physical presence in the United States prior to and after December 21, 2000.

An alien may make the demonstration of physical presence by submitting a photocopy of a Federal, state, or local government-issued document(s) that demonstrates the alien's physical presence in the United States on December 21, 2000 (or before and after that date). If the alien is not in

possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, state, or local government agency, the type of document and the date on which it was issued. Examples of such Service issued documents include, but are not limited to, Form I–94, Arrival-Departure Record, Form I–862, Notice to Appear, Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, or Form I–221, Order to Show Cause. Examples of such Federal, state, or local government issued documents include, but are not limited to, a state driver's license or identification card, a county or municipal hospital record, a public college or public school transcript, income tax records, a Federal, State, or local governmental record which was created on or prior to December 21, 2000, shows that the applicant was present in the United States at the time, or a transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities.

If there are no government-issued documents that demonstrate an alien's physical presence on December 21, 2000, the Service will accept and evaluate non-government issued documents. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the documentation is normally signed or sealed), be issued on letterhead stationery, or be otherwise authenticated. A personal affidavit attesting to physical presence on December 21, 2000, will not be accepted without additional evidence to validate the affidavit. Examples of such non-government issued documents include, but are not limited to, school records, rental receipts, utility bills, cancelled personal checks, employment records, or credit card statements.

In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service and the Executive Office for Immigration Review (EOIR) having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority (i.e., the Service or EOIR). It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application.

Do the Dependent Family Members of a Grandfathered Alien Need to Meet the December 21, 2000, Physical Presence Requirement?

No, the dependent spouse or children of a grandfathered alien are not required to meet the physical presence requirement. Only the principal beneficiary of an immigrant visa petition or application for labor certification filed after January 14, 1998, and on or before April 30, 2001, needs to demonstrate his or her physical presence in the United States on December 21, 2000.

What Outdated Information Is Being Removed From the Regulations?

The Department amends 8 CFR 245.10 to remove language made obsolete by Public Law 105–119 and Public Law 106–554, specifically: language that refers to fee amounts for applications filed before December 29, 1996; and language that ends the application period for adjustment applications on October 23, 1997. The new language conforms the regulations to the existing law and established procedures.

Congressional Review Act

Although this rule falls under the category of major rule as that term is defined in 5 U.S.C. 804(2)(A), the Department finds that under 5 U.S.C. 808(2) good cause exists for immediate implementation of this regulation upon publication in the **Federal Register**. The reason and necessity for immediate implementation are as follows: Under the statutory (LIFE Act) changes that went into effect on December 21, 2000, individuals who want preserve their ability to adjust their immigration status under section 245(i) of the Act must do so by April 30, 2001. Accordingly, because there is a very short window of opportunity for these individuals to apply, the Department finds that delaying the effective date of this rule is impracticable, unnecessary, and contrary to the public interest.

Good Cause Exception

The Department's implementation of this rule as an interim rule with provisions for post-promulgation comment, and with an immediate effective date, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The implementation of this rule without prior notice and comment, and without a delayed effective date, is necessary to implement recently enacted statutory changes that took effect upon enactment on December 21, 2000. There is a very short window of opportunity (ending on April 30, 2001) provided by the new law for the filing of immigrant visa petitions and applications for labor certification, in order to preserve the ability of eligible aliens to adjust their status under Section 245(i) of the Act (8 U.S.C. 1255(i)).

This rule implements a portion of the LIFE Act Amendments by setting forth the procedural instructions on the proper filing of immigrant visa petitions, applications for labor certification, and applications for adjustment of status under Section 245(i). Certain individuals, if they miss the opportunity to use Section 245(i) to adjust their status while in the United States, may be subject to the 3 or 10 year bars to admission under Section 212(a)(9) (8 U.S.C. 1182(a)(9)) if they leave the United States to apply for an immigrant visa at a U.S. consular office abroad. It would be impractical and contrary to the public interest to publish a proposed rule or to delay the effective date of these procedural instructions, because the public comment period and a delayed effective date would consume most of the very limited time statutorily available for qualified applicants to take advantage of the new law. The Department will fully consider all comments about this interim rule that are submitted during the comment period.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals by temporarily removing certain restrictions on eligibility for adjustment of status in accordance with Public Law 110–119. This rule is intended to eliminate inconvenience to a number of individuals currently in the United States who otherwise would be required to incur significant monetary expenses by traveling abroad to apply for an immigrant visa at a United States consulate or embassy. This interim rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1 year, and it will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. This rule will result in an effect on the economy of approximately:

$178,300,000 for 2001,
$99,200,000 for 2002, and
$91,900,000 for 2003.

This increase in cost is directly associated with the expected increase in the number of applications for adjustment of status submitted under section 245(i) of the Act (8 U.S.C. 1255(i)) with the required $1,000 penalty fee and other associated applications. Section 1502 of the LIFE Amendments, Public Law 106–554, reinstates section 245(i) until April 30, 2001. The reinstatement of section 245(i) provides some previously ineligible individuals with the opportunity to file the proper forms to preserve their ability to use section 245(i). The Service projects that in fiscal year 2001, a total 946,000 applications will be submitted because of the reinstatement of section 245(i) of the Act as follows:

500,000 Forms I–130;
50,000 Forms I–140;
148,500 Forms I–765;
82,500 Forms I–131; and
165,000 Forms I–485.

In addition, the Department of Labor projects that at least 40,000 Forms ETA 750 will be submitted. The Service projects that in fiscal year 2002, a total of 324,000 total applications will be submitted as follows:

121,500 Forms I–765;
67,500 Forms I–131; and
135,000 Forms I–485.

The Service projects that in fiscal year 2003, a total of 300,000 applications will be submitted as follows:

112,500 Forms I–765;
62,500 Forms I–131; and
125,000 Forms I–485.

Executive Order 12866

This rule is considered by the Department of Justice to be an "economically significant regulatory action" under Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

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. Therefore, in accordance with Section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This interim rule meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements pertaining to this rule were previously approved for use by the Office of Management and Budget (OMB). The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; Sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

2. Section 245.10 is amended by:

a. Revising the section heading;
b. Removing paragraph (c);
c. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively;
d. Adding a new paragraph (a);
e. Revising newly redesignated paragraph (b) introductory text;
f. Revising newly redesignated paragraphs (b)(4), (b)(5), and (b)(7);
g. Revising newly redesignated paragraph (c) introductory text;
h. Revising the phrase "receipt of approval" to read "receipt or approval" in the first sentence of newly redesignated paragraph (c)(3);
i. Revising paragraph (d);
j. Revising paragraph (e);
k. Revising paragraph (f); and
l. Adding new paragraphs (h), (i), (j), (k), (l), (m), and (n).

The additions and revisions to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under section 245(i).

(a) *Definitions.* As used in this section the term:

(1)(i) *Grandfathered alien* means an alien who is the beneficiary (including a spouse or child of the alien beneficiary if eligible to receive a visa under section 203(d) of the Act) of:

(A) A petition for classification under section 204 of the Act which was properly filed with the Attorney General on or before April 30, 2001, and which was approvable when filed; or

(B) An application for labor certification under section 212(a)(5)(A) of the Act that was properly filed pursuant to the regulations of the Secretary of Labor on or before April 30, 2001, and which was approvable when filed.

(ii) If the qualifying visa petition or application for labor certification was filed after January 14, 1998, the alien must have been physically present in the United States on December 21, 2000. This requirement does not apply with respect to a spouse or child accompanying or following to join a principal alien who is a grandfathered alien as described in this section.

(2) *Properly filed* means:

(i) With respect to a qualifying immigrant visa petition, that the application was physically received by the Service on or before April 30, 2001, or if mailed, was postmarked on or before April 30, 2001, and accepted for filing as provided in § 103.2(a)(1) and (a)(2) of this chapter; and

(ii) With respect to a qualifying application for labor certification, that the application was properly filed and accepted pursuant to the regulations of the Secretary of Labor, 20 CFR 656.21.

(3) *Approvable when filed* means that, as of the date of the filing of the qualifying immigrant visa petition under section 204 of the Act or qualifying application for labor certification, the qualifying petition or application was properly filed, meritorious in fact, and non-frivolous ("frivolous" being defined herein as patently without substance). This determination will be made based on the circumstances that existed at the time the qualifying petition or application was filed. A visa petition that was properly filed on or before April 30, 2001, and was approvable when filed, but was later withdrawn, denied, or revoked due to circumstances that have arisen after the time of filing, will preserve the alien beneficiary's grandfathered status if the alien is otherwise eligible to file an application

for adjustment of status under section 245(i) of the Act.

(4) *Circumstances that have arisen after the time of filing* means circumstances similar to those outlined in § 205.1(a)(3)(i) or (a)(3)(ii) of this chapter.

(b) *Eligibility.* An alien who is included in the categories of restricted aliens under § 245.1(b) and meets the definition of a "grandfathered alien" may apply for adjustment of status under section 245 of the Act if the alien meets the requirements of paragraphs (b)(1) through (b)(7) of this section:

* * * * *

(4) Properly files Form I–485, Application to Register Permanent Residence or Adjust Status on or after October 1, 1994, with the required fee for that application;

(5) Properly files Supplement A to Form I–485 on or after October 1, 1994;

* * * * *

(7) Will adjust status under section 245 of the Act to that of lawful permanent resident of the United States on or after October 1, 1994.

(c) *Payment of additional sum.* An adjustment applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment application filing fee as specified in § 103.7(b)(1) of this chapter. Each application submitted under the provisions of section 245(i) of the Act must be submitted with an additional sum of $1,000. An applicant must submit the additional sum of $1,000 only once per application for adjustment of status submitted under the provisions of section 245(i) of the Act. However, an applicant filing under the provisions of section 245(i) of the Act is not required to pay the additional sum if, at the time the application for adjustment of status is filed, the alien is:

* * * * *

(d) *Pending adjustment application with the Service or Executive Office for Immigration Review filed without Supplement A to Form I–485 and additional sum.* An alien who filed an adjustment of status application with the Service in accordance with § 103.2 of this chapter will be allowed the opportunity to amend such an application to request consideration under the provisions of section 245(i) of the Act, if it appears that the alien is not otherwise ineligible for adjustment of status. The Service shall notify the applicant in writing of the Service's intent to deny the adjustment of status application, and any other requests for benefits that derive from the adjustment application, unless Supplement A to Form I–485 and any required additional sum is filed within 30 days of the date of the notice. If the application for adjustment of status is pending before the Executive Office for Immigration Review (EOIR), EOIR will allow the respondent an opportunity to amend an adjustment of status application filed in accordance with § 103.2 of this chapter (to include Supplement A to Form I–485 and proof of remittance to the INS of the required additional sum) in order to request consideration under the provisions of section 245(i) of the Act.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act also shall not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. An applicant whose pre-October 1, 1994, application for adjustment of status has been denied may file a new application for adjustment of status pursuant to section 245(i) of the Act on or after October 1, 1994, provided that such new application is accompanied by: the required fee; Supplement A to Form I–485; the additional sum required by section 245(i) of the Act; and all other required initial and additional evidence.

(f) *Effect of section 245(i) on completed adjustment applications before the Service.* (1) Any motion to reopen or reconsider before the Service alleging availability of section 245(i) of the Act must be filed in accordance with § 103.5 of this chapter. If said motion to reopen with the Service is granted, the alien must remit to the Service Supplement A to Form I–485 and the additional sum required by section 245(i) of the Act. If the alien had previously remitted Supplement A to Form I–485 and the additional sum with the application which is the subject of the motion to reopen, then no additional sum need be remitted upon such reopening.

(2) An alien whose adjustment application was adjudicated and denied by the Service because of ineligibility under section 245(a) or (c) of the Act and now alleges eligibility due to the availability of section 245(i) of the Act may file a new application for adjustment of status pursuant to section 245(i) of the Act, provided that such new application is accompanied by the required fee for the application, Supplement A to Form I–485, additional sum required by section 245(i) of the Act and all other required and additional evidence.

* * * * *

(h) *Asylum or diversity immigrant visa applications.* An asylum application, diversity visa lottery application, or diversity visa lottery-winning letter does not serve to grandfather the alien for purposes of section 245(i) of the Act. However, an otherwise grandfathered alien may use winning a diversity visa as a basis for adjustment.

(i) *Denial, withdrawal, or revocation of the approval of a visa petition or application for labor certification.* The denial, withdrawal, or revocation of the approval of a qualifying immigrant visa petition, or application for labor certification, that was properly filed on or before April 30, 2001, and that was approvable when filed, will not preclude its grandfathered alien (including the grandfathered alien's family members) from seeking adjustment of status under section 245(i) of the Act on the basis of another approved visa petition, a diversity visa, or any other ground for adjustment of status under the Act, as appropriate.

(j) *Substitution of a beneficiary on an application for a labor certification.* Only the alien who was the beneficiary of the application for the labor certification on or before April 30, 2001, will be considered to have been grandfathered for purposes of filing an application for adjustment of status under section 245(i) of the Act. An alien who was previously the beneficiary of the application for the labor certification but was subsequently replaced by another alien on or before April 30, 2001, will not be considered to be a grandfathered alien. An alien who was substituted for the previous beneficiary of the application for the labor certification after April 30, 2001, will not be considered to be a grandfathered alien.

(k) *Changes in employment.* An applicant for adjustment under section 245(i) of the Act who is adjusting status through an employment-based category is not required to work for the petitioner who filed the petition that grandfathered the alien, unless he or she is seeking adjustment based on employment for that same petitioner.

(l) *Effects of grandfathering on an alien's nonimmigrant status .* An alien's nonimmigrant status is not affected by the fact that he or she is a grandfathered alien. Lawful immigration status for a nonimmigrant is defined in § 245.1(d)(1)(ii).

(m) *Effect of grandfathering on unlawful presence under section*

212(a)(9)(B) and (c) of the Act. If the alien is not in a period of stay authorized by the Attorney General, the fact that he or she is a grandfathered alien does not prevent the alien from accruing unlawful presence under section 212(a)(9)(B) and (C) of the Act.

(n) *Evidentiary requirement to demonstrate physical presence on December 21, 2000.* (1) Unless the qualifying immigrant visa petition or application for labor certification was filed on or before January 14, 1998, a principal grandfathered alien must establish that he or she was physically present in the United States on December 21, 2000, to be eligible to apply to adjust status under section 245(i) of the Act. If no one document establishes the alien's physical presence on December 21, 2000, he or she may submit several documents establishing his or her physical presence in the United States prior to, and after December 21, 2000.

(2) To demonstrate physical presence on December 21, 2000, the alien may submit Service documentation. Examples of acceptable Service documentation include, but are not limited to:

(i) A photocopy of the Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(ii) A photocopy of the Form I–862, Notice to Appear;

(iii) A photocopy of the Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to December 21, 2000, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(iv) A photocopy of the Form I–221, Order to Show Cause, issued by the Service on or prior to December 21, 2000, placing the applicant in deportation proceedings under section 242 or 242A of the Act (as in effect prior to April 1, 1997);

(v) A photocopy of any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to December 21, 2000, which establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(3) To demonstrate physical presence on December 21, 2000, the alien may submit other government documentation. Other government documentation issued by a Federal, state, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than December 21, 2000. For this purpose, the term Federal, state, or local authority includes any governmental, educational, or administrative function operated by Federal, state, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(i) A state driver's license;

(ii) A state identification card;

(iii) A county or municipal hospital record;

(iv) A public college or public school transcript;

(v) Income tax records;

(vi) A certified copy of a Federal, state, or local governmental record which was created on or prior to December 21, 2000, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, state, or local governmental agency keeping such record;

(vii) A certified copy of a Federal, state, or local governmental record which was created on or prior to December 21, 2000, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, state, or local governmental agency keeping such record;

(viii) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards.

(4) To demonstrate physical presence on December 21, 2000, the alien may submit non-government documentation. Examples of documentation establishing physical presence on December 21, 2000, may include, but are not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the Federal or State government, such as public utilities, accredited private and religious schools, and banks;

(ix) If the applicant established that a family unit was in existence and cohabiting in the United States, documents evidencing the presence of another member of the same family unit; and

(x) For applicants who have ongoing correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records.

(5)(i) The adjudicator will evaluate all evidence on a case-by-case basis and will not accept a personal affidavit attesting to physical presence on December 21, 2000, without requiring an interview or additional evidence to validate the affidavit.

(ii) In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service and the Executive Office for Immigration Review (EOIR) having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority (i.e., the Service or EOIR). It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application.

Dated: March 20, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–7373 Filed 3–21–01; 3:32 pm]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE26

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on September 22, 1999 (64 FR 51370), and reflected in the 2000 revision of the Code of Federal

Regulations. This action corrects the final rule by specifying the use of a flaw length sizing criterion for reactor vessel qualification. This correction is necessary for clarity and consistency in the regulations.

DATES: Effective March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Donald G. Naujock [telephone (301) 415–2767, e-mail DGN@nrc.gov] of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1999 (64 FR 51370), a final rule " Industry Codes and Standards; Amended Requirements" was published in the **Federal Register**. The purpose of the rule was to permit the use of improved methods in § 50.55a for construction, inservice inspection and inservice testing of nuclear power plant components. The rule, in part, permits licensees to modify implementation of Appendix VIII to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (the Code) provided that certain provisions specified in the regulations were followed. Paragraph (b)(2)(xv)(C) addressed the provisions regarding application of Supplement 4 to Appendix VIII. After the final rule was published, an error was discovered in paragraph (b)(2)(xv)(C)(*1*). Paragraph (b)(2)(xv)(C)(*1*) properly stipulated the use of a flaw depth sizing criterion, but failed to specify the use of an appropriate flaw length sizing criterion for reactor vessel qualification. It has always been the intent of the NRC to require the use of both depth and length criteria for flaw sizing qualification. This intent is evident in paragraph (b)(2)(xv)(F)(*2*) of § 50.55a which stipulates that length sizing qualifications must satisfy the acceptance criterion of Appendix VIII, Supplement 4.

With respect to a length sizing criterion, it was the intent of the NRC to specify in the final rule, the use of 0.75 inch root mean square (RMS) length sizing criterion in lieu of Appendix VIII, Supplement 4, Subparagraph 3.2(b). Since 1995, the NRC has supported the 0.75 inch RMS numeric value as an appropriate length sizing criterion for reactor vessels. This numeric value is the same as the length sizing criterion referenced in (b)(2)(xv)(E)(*3*).

Need for Correction

As published, the **Federal Register** and the Code of Federal Regulations contain an error which is misleading and needs to be corrected.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sections 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.55a, paragraph (b)(2)(xv)(C)(*1*) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(2) * * *

(xv) * * *

(C) * * *

(*1*) A depth sizing requirement of 0.15 inch RMS shall be used in lieu of the requirement in Subparagraph 3.2(a), and a length sizing requirement of 0.75 inch RMS shall be used in lieu of the requirement in Subparagraph 3.2(b).

* * * * *

Dated at Rockville, Maryland, this 20th day of March, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–7352 Filed 3–23–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2001–9059; Airspace Docket No. 01–AWA–1]

RIN 2120–AA66

Establishment of Prohibited Area P–49 Crawford; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Prohibited Area 49 (P–49) over the Crawford, TX, residence of the President of the United States. The FAA is taking the action to enhance security in the immediate vicinity of the presidential residence and assist the United States Secret Service in accomplishing its mission of providing security for the President of the United States.

EFFECTIVE DATES: 0901 UTC, May 17, 2001.

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

SUPPLEMENTARY INFORMATION:

Background

On March 7, the Department of the Treasury, United States Secret Service requested that the FAA establish a prohibited area at Crawford, TX, to enhance the level of security provided the President. In order to provide adequate safeguards for the protection of the President, it is necessary to designate certain airspace above the presidential residence at Crawford, TX, as a prohibited area. Under the provision of Section 73.83, no person may operate an aircraft within that area

without permission from the using agency. This action responds to that request.

The Rule

This amendment to 14 CFR part 73 establishes P–49 Crawford, TX. The prohibited area extends from the surface to 5,000 feet above mean sea level (MSL) within a 3-nautical mile (NM) radius of latitude 31°34′57″ N., longitude 97°32′37″ W. Flight within this area is prohibited unless permission is obtained from the using agency.

Because of the immediate need to enhance the security of the President, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable. Section 73.89 of 14 CFR part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

This regulation is limited to 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. Since it has been determined that 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 to establish a prohibited area from the surface up to 5,000 feet MSL 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 there do not appear to be extraordinary circumstances warranting preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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.

§ 73.63 [Amended]

2.Part 73 is amended by adding new Section 73.63 to read as follows:

* * * * *

P–49 Crawford, TX [New]

Boundaries. That airspace within a 3 NM radius of lat. 31°34′57″ N., long. 97°32′37″ W.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. Continuous.

Using agency. United States Secret Service, Washington, DC.

* * * * *

Issued in Washington, DC, on March 20, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–7412 Filed 3–21–01; 2:49 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 159, 178

[T.D. 01–24]

RIN 1515–AC30

Foreign Repairs to American Vessels

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations. These changes are implemented in order that the Customs Regulations regarding vessel repair accurately reflect the amended underlying statutory authority, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

EFFECTIVE DATE: April 25, 2001.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Glenn Seale, Supervisory Customs Liquidator, 504–670–2137.

Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

SUPPLEMENTARY INFORMATION:

Background

The genesis of the modern vessel repair statute, 19 U.S.C. 1466, is found in the Act of July 18, 1866, Chapter 24, section 23 (14 Stat. 183). A 50 percent *ad valorem* duty was imposed on the foreign cost of repairs to United States vessels documented to engage in the foreign or coastwise trade on the northern, northeastern, and northwestern frontiers (practically speaking, Great Lakes, Atlantic, and Pacific Coast trade with Canada). The statute also provided for remission or refund of duties where it was established by sufficient evidence that the vessel had been compelled to seek foreign repairs due to a weather-related or other casualty. The statute was recodified in the Revised Statutes of the United States in 1874 (R.S. 3114 and 3115), but was left largely unamended until the Act of September 21, 1922, at which time the area of consideration for dutiable repairs was expanded to include repairs to all vessels documented under U.S. law to engage in the foreign or coastwise trade, as well as those intended to be so employed.

The statute has undergone amendment several times since 1922 and has been the subject of considerable judicial interpretation over the years as well. Most recently, the statute has been amended in significant ways and a court case with broad impact on the administration of the law has also been decided.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 (Pub. L. 101–382), section 484E of which amended the vessel repair statute by adding a new subsection (h). Subsection (h), which by its terms expired on December 31, 1992, included two elements. These concerned the exclusion from vessel repair duty of Lighter Aboard Ship (LASH) barges, and of spare parts and materials for use in vessel repairs abroad which had previously been imported and duty paid at the appropriate rate under the Harmonized Tariff Schedule of the United States (HTSUS).

Two years after the expiration of that legislation, the Congress enacted section 112 of Pub. L. 103–465 which became effective on January 1, 1995. That provision permanently reenacted the previously expired 19 U.S.C. 1466(h)(1) and (2), as discussed above, and also added a new subsection (h)(3) which, as administered by Customs, provides that vessel repair duties will be assessed at the applicable HTSUS rate for spare parts which are necessarily installed on vessels overseas prior to those spare

parts ever having been entered into the United States for entry and consumption, such as is necessary under the (h)(2) provision.

The most basic issue to be determined in applying the vessel repair statute to a factual situation is, of course, whether a repair has taken place within the meaning of 19 U.S.C. 1466(a). Courts have ruled extensively on the "repair" cost issue and the result is a continually narrowing field of dutiable repair. One early case (*United States* v. *George Hall Coal Co.*, 134 F. 1003 (1905)), was the first to find any of various types of expenses associated with repairs to be classifiable as not subject to the assessment of vessel repair duties. The case established that the expense of drydocking a vessel (regardless of the underlying need to drydock) is not an element of dutiable value in foreign repair costs. Drydocking is a major, but not isolated, expense in general ship repair operations. Many other associated expenses and services are necessary adjuncts to drydocking and are logically inseparable from the drydocking rule. These include such items as drydock block arrangement, sea water supply (for firefighting equipment), hose hook-up and disconnection charges, fire watch services, the services of a crane for drydocking-related operations, the provision of compressed air, cleaning of the drydock following repairs, among numerous others. These necessary services are costly, are supplied at nearly each drydocking, and had until recently been considered to be classifiable as duty-free.

On December 29, 1994, the United States Court of Appeals for the Federal Circuit decided the case of *Texaco Marine Services, Inc., and Texaco Refining and Marketing, Inc.* v. *United States*, 44 F.3d 1539, in which the court considered the propriety of several long-standing court cases, including the opinion in *George Hall, supra*. The court decided that a whole range of charges are subjected to duty consideration which had been insulated from such treatment since 1905.

The significant changes, as described above, in terms of both statutory amendment and judicial interpretation have dictated the need to update the regulatory provisions in § 4.14 of the Customs Regulations (19 CFR 4.14), which implement the vessel repair statute.

Accordingly, by a document published in the **Federal Register** (64 FR 19508) on April 21, 1999, Customs proposed necessary amendments to § 4.14 to conform with the described statutory and judicial changes, and to set forth these regulatory provisions in a more streamlined and simpler format.

To streamline the process for seeking relief from vessel repair duties, most significantly, Customs proposed to eliminate the Petition for Review process; this process is currently the second of two pre-protest appeals for relief from duty. Also, Customs proposed to vest the Customs field Vessel Repair Units with full authority to process and decide Applications for Relief without restrictions as to the amount of potential duty involved.

Additionally, it was proposed to amend the Customs Regulations in part 159 (19 CFR part 159) to recognize that vessel repair entries are not considered to be subject to liquidation, and to provide that any duties paid pursuant to a vessel repair entry would be considered to be charges or exactions within the meaning of paragraph (a)(3) of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), the statute under which decisions of the Customs Service are protested. As charges or exactions, duty determinations on vessel repair entries would be protestable under 19 U.S.C. 1514(a)(3), and would not be subject to voluntary reliquidation or deemed liquidation procedures. This distinction recognizes elements which are unique to the vessel repair entry process such as potential protracted delays in supplying cost information due to difficulty in obtaining proof of foreign expenses from shipyards in a timely fashion.

The period during which public comments could be submitted concerning the proposed rule was extended an additional 30 days by a document published in the **Federal Register** (64 FR 29975) on June 4, 1999.

A total of six comments were received in response to the proposed rule. Two of these comments were generally supportive of the proposal, four were critical of it, and five of the six comments received suggested that the proposed regulations be changed in various ways. A description, together with Customs analysis, of the issues raised in the comments, is set forth below.

Discussion of Comments

Comment: One commenter generally recommended that the fifty percent vessel repair duty rate be doubled to one-hundred percent.

Customs Response: The duty rate is set by statute and may be amended only by legislative action.

Comment: With reference to proposed § 4.14(a), two commenters objected to the requirement that repairs performed "on the high seas" were subject to vessel repair duty. One commenter asserted that 19 U.S.C. 1466(a) neither required nor contemplated that repairs made on the high seas fall within the scope of the vessel repair statute, and that proposed § 4.14(a) was in conflict with the law. The other commenter found this requirement to be misleading in that it could be misinterpreted to include repairs made by members of a vessel's regular crew while the ship was at sea.

Customs Response: Case law clearly establishes liability for duty under the vessel repair statute (19 U.S.C. 1466) for repairs performed on the high seas (see *Mount Washington Tanker Company* v. *United States*, 1 CIT 32, 505 F. Supp. 209 (1980), aff'd 69 CCPA 23, 665 F.2d 340.

However, since the statute does provide an exception for the cost of labor performed by members of the regular crew of a vessel, § 4.14(a) is revised to state that compensation paid to members of the regular crew for repairs made on the high seas is not includable in any reported parts, materials, or equipment costs.

Comment: One commenter suggested that the third sentence of proposed § 4.14(a) be changed so as to avoid any misinterpretation that the vessel repair statute applies to foreign-documented vessels.

Customs Response: We are grateful to the commenter for pointing out the need for clarification with respect to the application of the statute to vessels which are considered to be "intended to be employed" in foreign or coastwise trade within the meaning of the law. On March 18, 1998, Customs published a notice in the weekly Customs Bulletin notifying interested parties that certain prior Customs rulings interpreting the "intended to be employed" language were being revoked and replaced by a new interpretation. The position of Customs since the date of that notice has been that the law is intended to apply as well to vessels which are either undocumented or are foreign-documented at the time of foreign repairs, so long as they are documented under U.S. law at the time of their first arrival in this country following those repairs. Thus, while the law does not apply to foreign-flag vessels arriving in the United States after repairs abroad, it does apply to arriving U.S.-flag vessels which were repaired while they were under foreign documentation.

Comment: Two commenters were concerned about the requirement in proposed § 4.14(a) that all foreign repairs and purchases be declared regardless of their dutiable status.

Customs Response: This requirement has long appeared in the vessel repair regulations (currently, see 19 CFR 4.14(b)(1) (1999)). Customs has decided that it should be retained in § 4.14(a) of this final rule.

Comment: One commenter stated that paragraphs (b)(1) and (b)(2) of proposed § 4.14 were inconsistent, in that the former expressly provided for the submission of the electronic equivalent of declaration and entry forms, whereas the latter made no such provision.

Customs Response: Customs has determined that there is no need to provide for the declaration and entry filing requirements, electronic or otherwise, in either of these provisions since the purpose of these provisions is to merely address the particular types of vessels to which the vessel repair statute applies. Thus, the reference to these filing requirements is removed from § 4.14(b)(1). The general requirements for filing a vessel repair declaration and entry are comprehensively covered in § 4.14(d) and (e). These provisions provide for the filing of electronic equivalents of a vessel repair declaration and entry.

Comment: One commenter urged that proposed § 4.14(b)(2), relating to the applicability of the vessel repair statute to government-owned or chartered vessels, be amended to expressly provide that all such vessels which were not under the jurisdictional control of the Secretary of the Navy would be required to comply fully with all vessel repair regulatory provisions.

Customs Response: Customs disagrees. Section 4.14(b)(2) is applicable to numerous vessels including those under U.S. Navy control, vessels of the Coast Guard, the National Marine Fisheries Service, and the National Oceanographic and Atmospheric Administration, among others.

Comment: One commenter suggested that proposed § 4.14(b)(3) be changed to require, in the case of a vessel which has remained continuously outside the United States for two years or longer, that repairs to such a vessel that are scheduled for completion within fifteen months before the vessel's return to the United States also be made subject to the assessment of duty.

Customs Response: The potential duty liability for applicable repair operations under 19 U.S.C. 1466(e)(1)(B) is expressly limited to those operations that occur during the first six months after the last departure of the vessel from the United States. This six-month rule is statutory and cannot be expanded without amendatory legislation.

Comment: Two commenters were opposed to the use of the phrase "specifically depart" appearing in proposed § 4.14(b)(3), where duty liability would arise in connection with certain vessels that departed from the U.S. specifically to make foreign repairs and purchases. Under 19 U.S.C. 1466(e)(2), duty liability would arise in this context where the vessels departed for the "sole purpose" of making foreign repairs and purchases. The commenters asked that this phrase likewise be used in proposed § 4.14(b)(3).

Customs Response: Customs agrees. Section 4.14(b)(3) is revised as requested. Further, it is noted that § 4.14(b)(3) has been generally revised and restructured for editorial clarity.

Comment: One commenter recommended changing proposed § 4.14(c) to require that the vessel operator file the bond needed to cover potential duty liability under a vessel repair entry directly with the Vessel Repair Unit (VRU) at the time that the operator also files the entry with the VRU, instead of the operator having to submit the bond to Customs at the port of arrival which would then forward it to the VRU. Since Customs at the port of arrival has authority to set bond amounts, the bond being obligated could simply be identified by number, amount and transaction type on the vessel repair declaration that must initially be made to Customs at the port of arrival.

Customs Response: While the Customs officials at the port of arrival retain authority to set bond amounts, the reality is that the vast majority of the bonds utilized in vessel repair entries are of the continuous type. The requirement and practice is that the operator when making an initial declaration at a port of arrival, indicates the name of the surety, the continuous bond number, and the amount of the bond on its Customs Form 226 vessel repair declaration. Based upon this information, Customs at the entry port is able to determine whether an additional single transaction bond will be required. Since in the vast majority of cases no additional bond is needed, the operator would simply list the same information on its Customs Form 226 when it is submitted as a vessel repair entry to the VRU. In those cases in which a single transaction bond is required by Customs to be submitted at an arrival port, the operator would place the identifying information for that bond on both the Customs Form 226 declaration and the subsequent entry. The responsible VRU would contact the arrival port should a copy of that bond form be needed.

Comment: With respect to proposed § 4.14(c), one commenter questioned the need for a deposit of estimated duties or the filing of a bond where a private party operated a vessel owned or chartered by a Federal agency under a contract that obligated the agency for the payment of any duty. The commenter stated that the provision should provide for a deposit or bond only if the contract placed duty liability on the private party.

Customs Response: Customs agrees and has so changed § 4.14(c).

Comment: In proposed § 4.14(d) and (e) addressing the presentation of a vessel repair declaration and entry, respectively, two commenters disagreed with the requirement that the declaration be submitted to Customs at the port of arrival, while the entry had to be filed with Customs at the port where the Vessel Repair Unit (VRU) was located.

Customs Response: The declaration and entry forms are processed in different locations. By requiring the vessel owner, master, or authorized agent to submit the forms directly to the locations in which they will be processed, Customs avoids the additional, internal step of forwarding the entry to the Vessel Repair Unit (VRU), thereby expediting the entire process. VRUs which process vessel repair entries are consolidated in just three locations (San Francisco, New York and New Orleans), in order to enhance administrative efficiency in, and expedite, processing of these entries. Under the amendment, instead of Customs forwarding the entry from the port of arrival to the VRU, as is currently the case, the vessel operator himself will simply send the entry directly to the VRU. However, vessel repair declarations covering foreign repair costs of a vessel must still be made to Customs initially at the first U.S. port of arrival following a foreign voyage. Accordingly, this will necessitate the direct and separate submission by vessel operators of declarations and entries, except, of course, to the extent the port of arrival and the VRU entry port are the same.

Comment: With respect to proposed § 4.14(e), one commenter asked that the time within which a vessel repair entry could be filed be extended to ten working days, as opposed to ten calendar days.

Customs Response: Customs has determined that reliance on calendar days is the most clear-cut means by which to track the entry filing period, and has retained this requirement in 4.14(e).

Comment: Two commenters disagreed with the provision in proposed § 4.14(e), with respect to the filing of a vessel repair entry, that a failure on the part of the vessel operator to submit full supporting evidence of foreign repair costs within the applicable time limits would be considered to be a failure to enter.

Customs Response: Customs has concluded that the requirement to make entry for foreign repairs and purchases under 19 U.S.C. 1466(a) reasonably and responsibly contemplates the filing of an entry which is properly completed within the authorized time limits. In this latter regard, quite significantly, § 4.14(f) provides that evidence to complete a vessel repair entry must be received by the appropriate VRU port within 90 calendar days from the date of the vessel's arrival. Section 4.14(f) also provides for a 30-day extension of this period if a written explanation of need is submitted prior to the expiration of the original 90-day submission period. Furthermore, a request for an extension beyond the 30-day grant issued by a VRU may be made as well, but must be submitted through the VRU to the Entry Procedures and Carriers Branch in Customs Headquarters. Customs believes that these time frames provide a satisfactory and fully adequate opportunity within which to file a complete vessel repair entry.

Comment: One commenter observed that there could be a gap in the jurisdictional coverage of the VRU ports as described in the proposal, which could create uncertainty as to which VRU covered the Customs ports of Newport News and Richmond, Virginia. To eliminate this potential uncertainty, it was suggested that proposed § 4.14(g) be changed to provide that all ports in the State of Virginia would fall within the jurisdiction of the VRU in New Orleans, Louisiana.

Customs Response: Customs agrees. Section 4.14(g) is revised accordingly.

Comment: Several commenters disagreed with the reference to the terms "remission" and "refund" regarding determinations for relief from duty under the proposed regulation (proposed §§ 4.14(h) and (i), in particular). They stated that in the vast majority of cases, Customs would not have received a deposit of any estimated duties which could be remitted or refunded. It was recommended that the proposed rule be revised to eliminate reference to these terms.

Customs Response: The terms in question appear in the current vessel repair statute (19 U.S.C. 1466), as well as its predecessor provisions, the first of which was enacted in 1866. At that time, actual monetary deposits were received and the terms thus had full effect and meaning. However, Customs agrees that the vast majority of vessel repair entries made today are secured by the posting of surety bonds to cover potential liability.

Accordingly, because the use of the terms has been traditionally linked to claims for relief from duty collection under either 19 U.S.C. 1466(a) (refund claims), or 19 U.S.C. 1466(d) (remission claims), Customs has determined to revise § 4.14 to simply reference the applicable statutory provision under which a claim for relief is made, and to eliminate any reference to the terms in question. Specifically, the provisions of § 4.14(h), which include the justifications for obtaining relief from vessel repair duty, are recast as necessary. Also, paragraphs (e), (i), (i)(1), and (i)(1)(i) of § 4.14 are similarly revised.

Also, a new paragraph (h)(3) is added to § 4.14 to include the conditions under which a vessel remaining continuously outside the U.S. for two years or longer may be subject to relief from duty under 19 U.S.C. 1466(e). Further, a new paragraph (h)(4) is added to § 4.14 concerning claims for relief made under 19 U.S.C. 1466(h) in connection with Lighter Aboard Ship (LASH) barges and certain spare repair parts and materials.

Comment: Two commenters were confused by the requirement in proposed § 4.14(h)(2)(i) that any foreign repairs necessitated on a vessel due to stress of weather or other casualty be limited to the cost of the "minimal repairs" needed to secure the safety and seaworthiness of the vessel.

Customs Response: Customs agrees that the provision is unduly vague. Section 4.14(h)(2)(i) is revised by removing this requirement. Also, a corresponding change is made in § 4.14(i)(1)(v).

Comment: Some commenters opposed the elimination, in connection with proposed § 4.14(i), of the Petition for Review, as the last of two appeals for relief from duty (the first being the Application for Relief) that could be made prior to the filing of an administrative protest under 19 U.S.C. 1514. One commenter asserted that over the past three years, approximately two-thirds of the petitions considered resulted in at least partial relief.

Customs Response: It is Customs experience that the procedure for a Petition for Review has not provided benefits sufficient to overcome the significant delays it causes in bringing final resolution to vessel repair entry relief claims.

Most commonly, vessel repair operators do not advance all valid claims for relief initially in their Applications for Relief, which is why some additional relief is later granted when such claims are included in Petitions for Review.

However, notwithstanding the elimination of the Petition for Review, vessel operators may still avail themselves of a full Customs Headquarters review of their duty relief claims through the administrative protest procedure. In this way, claims for relief will be processed and finalized much more expeditiously with regard to future vessel repair entries.

Comment: Several commenters urged that language be added to proposed § 4.14(i)(1) to clearly establish that an extension of time for filing an Application for Relief from vessel repair duty may be allowed, in the same way that additional time is allowed under proposed § 4.14(f) to file necessary evidence that supports the cost of each item covered in a vessel repair entry.

Customs Response: Customs agrees and has so changed § 4.14(i)(1) consistent with § 4.14(f); and § 4.14(f) is changed to state that granting an extension of time within which necessary evidence may be filed will likewise extend the time within which an Application for Relief may be filed.

A provision is also added to § 4.14(i)(1) to note explicitly that there is no requirement that an Application for Relief be filed in relation to a vessel repair entry. However, if no Application is filed, the duty amount on the entry will be determined without regard to any potential claim for relief from duty.

Comment: Two commenters did not know what was meant by the requirement in proposed § 4.14(i)(1)(i) that, in an Application for Relief, the cost of items for which relief from duty was being sought had to be segregated from the cost of other items included in a vessel repair entry for which relief was not being sought.

Customs Response: In § 4.14(i)(1)(i), an Application for Relief must include copies of itemized bills, receipts and invoices covering all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor properly included in the vessel repair entry. In requiring that the cost of items for which relief from duty is sought be segregated in the Application from those items for which relief is not requested, Customs is merely reiterating the position consistently articulated over many years in rulings on vessel repair relief requests. It continues to be the case that if dutiable and non-dutiable purchases are included on a

single invoice, the costs attributable to each must be segregated in order that appropriate relief might be correctly and effectively granted.

Comment: Two commenters objected to the certification requirements set forth in proposed § 4.14(i)(1)(iii), (iv) and (v), essentially viewing these provisions as being unnecessary, burdensome, and inconsistent.

Customs Response: Customs disagrees that the certification requirements contained in § 4.14(i)(1)(iii)–(v) pose any problem, as described. Respectively, these certifications quite reasonably provide, as part of an Application for Relief, that the appropriate senior officer must attest to all relevant circumstances relating to any casualty damage and any foreign repair expenditures that are enumerated in the vessel repair entry; and that the master of the vessel must attest that any casualty-related expenditures were necessary to ensure the safety and seaworthiness of the vessel in reaching its U.S. port of destination. These certification requirements have in substance long appeared in the vessel repair regulations (currently, see 19 CFR 4.14(d)(1)(iii)(D) and (E) (1999)). Customs has determined that they should be retained in these regulations.

As already noted, § 4.14(i)(1)(v) is revised consistent with the change made in § 4.14(h)(2)(i).

Comment: One commenter wanted to delete the requirement in proposed § 4.14(i)(1)(vi) that there be included, as part of an Application for Relief, copies of any permits or other documents filed with, or issued to the vessel operator by, other agencies of the United States Government relating to the operation of the vessel. The commenter stated that there could be hundreds of permits variously issued to vessel operators.

Customs Response: The permits or documents that fall within the scope of § 4.14(i)(1)(vi) would, of course, encompass only those that are attendant upon the Application for Relief process. To this end, any submitted permits or documents from other agencies would be expected to bear some relevance to the claim for relief being sought. Consequently, Customs would have no interest in a vessel operator's tax or financing documents in the course of considering repair claims involving, for example, a vessel collision at sea or a grounding incident. A clarifying change is made in this regard to § 4.14(i)(1)(vi).

Comment: One commenter suggested that proposed § 4.14(j)(1) concerning penalties for failure to report, enter or pay duty as required under the vessel repair statute should include a reference to § 162.78 of the Customs Regulations (19 CFR 162.78) (presentations responding to prepenalty notice).

Customs Response: Customs does not believe that a cross reference to § 162.78 is needed. Section 4.14(j)(1) already contains a cross reference to § 162.72 of the Customs Regulations (19 CFR 162.72) which addresses penalty and forfeiture actions under 19 U.S.C. 1466. Customs believes that this is sufficient under the circumstances.

Comment: Several commenters took exception to the proposed amendment of § 159.11(b) (19 CFR 159.11(b)) under which assessments made in connection with vessel repair entries would no longer be subject to liquidation procedures under part 159 (19 CFR part 159), and that such assessments would instead be treated as "charges or exactions" protestable under 19 U.S.C. 1514(a)(3)). The commenters essentially believed that this change was unnecessary.

Customs Response: Customs has concluded that vessel repair entries are distinct from the liquidation criteria as specified in 19 U.S.C. 1500, which is the controlling statute that establishes appraisement, classification, and liquidation procedures for purposes of the duty assessment of imported merchandise. In this regard, Customs believes that vessel repair entries do not involve entries of imported merchandise, as provided in 19 U.S.C. 1500(d). Rather, a vessel repair entry involves the assessment of duties in connection with the cost of repairs that are the result of foreign shipyard operations. The statute, 19 U.S.C. 1466, is self-contained and sets a parallel procedure for making a final determination of the duty due on such repairs. That statute provides for procedures which are unique to the vessel repair entry process.

Consequently, while Customs has also concluded that any assessments determined to be due on a vessel repair entry for the cost of foreign repairs constitute duties, neither the vessel repair entry nor any duties assessed on the entry would be subject to liquidation under 19 U.S.C. 1500 or 19 CFR part 159.

Although vessel repair entries will not be liquidated, any duties assessed on such entries will still be subject to protest under 19 U.S.C. 1514(a)(2). Section 4.14(i)(3) is revised to make this clear and to make clear that the applicable protest period will begin on the date of the issuance of the decision by the VRU giving rise to the protest as indicated on the relevant correspondence from the appropriate Vessel Repair Unit. Also, related changes are made to §§ 159.1 and 159.2 to reflect that vessel repair entries and related duties are not subject to liquidation under 19 CFR part 159.

Conclusion

In view of the foregoing, and following careful consideration of the issues raised by the commenters and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above should be adopted.

Additional Change

Part 178, Customs Regulations (19 CFR part 178), which lists the information collection approvals under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), is revised to make provision for the information collection approval which covers this vessel repair regulation.

Regulatory Flexibility Act and Executive Order 12866

This final rule revises the Customs Regulations concerning the declaration, entry, assessment of duty and processing of petitions for relief from duty, for subject vessels under the vessel repair statute. The amendments are intended to accurately reflect the existing statutory authority, as well as legal and policy determinations made in this regard as the result of judicial decisions and administrative enforcement experience. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0082. This rule does not make any substantive changes to the existing approved information collection. Part 178, Customs Regulations (19 CFR part 178), is amended to make provision for this information collection approval. 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 control number.

Drafting Information

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Declarations, Entry, Repairs, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 159

Customs duties and inspection, Entry procedures.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 159, and 178, Customs Regulations (19 CFR parts 4, 159, and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citation for § 4.14, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;
* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;
* * * * *

2. Section 4.14 is revised to read as follows:

§ 4.14 Equipment purchases by, and repairs to, American vessels.

(a) *General provisions and applicability.* Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry and payment of ad valorem duty. This does not apply to reimbursement paid to members of the regular crew of a vessel for labor expended in making repairs to the vessel. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under Customs interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles which have been imported into the United States and are later sent abroad for use. For the purposes of this section, expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are considered to have been made in the United States, and are not subject to declaration, entry or duty. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are not subject to any vessel repair duties. Even in the absence of any liability for duty, it is still required that all repairs and purchases, including those made in Canada, Mexico, and Israel, be declared and entered.

(b) *Applicability to specific types of vessels.*

(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties for covered foreign expenditures. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S. are also liable for duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels continuously away for two years or longer.*

(i) *Liability for expenditures throughout entire absence from U.S.* Vessels that continuously remain outside the United States for two years or longer are liable for duty on any fish nets and netting purchased at any time during the entire absence. Vessels designed and used primarily for transporting passengers or merchandise, which depart the United States for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the United States.

(ii) *Liability for expenditures made during first six months of absence.* Except as provided in paragraph (b)(3)(i) of this section, vessels that continuously remain outside the United States for two years or longer are liable for duty only on those expenditures which are made during the first six months of their absence. See paragraph (h)(3) of this section. However, even though some costs might not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or produce evidence of a bond on Customs Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A continuous or single entry bond of sufficient value to cover all potential duty on the foreign repairs and purchases must be identified by surety, number and amount on the vessel repair declaration which is submitted at the port of first arrival. At the time the vessel repair entry is submitted by the vessel operator to the appropriate VRU port of entry as defined in paragraph (g) of this section, that same identifying information must be identified on the entry form. Sufficiency of the amount of the bond is within the discretion of Customs at the arrival port with claims for reduction in duty liability necessarily being subject to full consideration of evidence by Customs. Customs officials at the port of arrival may consult the appropriate Vessel Repair Unit (VRU) port of entry as identified in paragraph (g) of this section or the staff of the Entry Procedures and Carriers Branch in Customs Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby that private party is liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on Customs Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the

event that a Customs officer boards the vessel. If no foreign repair-related expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The Customs port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent will immediately forward it to the appropriate VRU port of entry as identified in paragraph (g) of this section.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on Customs Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the appropriate VRU port of entry as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Claims for relief from duty should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry as identified in paragraph (g) of this section within 90 calendar days from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given prior to or after the work was authorized by the operator. The proper VRU port of entry may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. All extensions will be issued in writing. Inadequate, vague, or open-ended requests will not be granted. Questions as to whether an extension should be granted may be referred to the Entry Procedures and Carriers Branch in Customs Headquarters by the VRU ports of entry. Any request for an extension beyond a 30-day grant issued by a VRU must be submitted through that unit to the Entry Procedures and Carriers Branch, Customs Headquarters. In the event that all cost evidence is not furnished within the specified time limit, or is of doubtful authenticity, the VRU may refer the matter to the Customs Office of Investigations to begin procedures to obtain the needed evidence. That office may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing Customs with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section. Extensions granted for the filing of necessary evidence may also extend the time for filing Applications for Relief (see paragraph (i)(1) of this section).

(g) *Location and jurisdiction of vessel repair unit ports of entry.* Vessel Repair Units (VRUs) are responsible for processing vessel repair entries. VRUs are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes vessel repair entries received from ports of arrival on the Great Lakes and the Atlantic Coast of the United States north of, but not including, those located in the State of Virginia. The New Orleans unit processes vessel repair entries received from ports of arrival on the Atlantic Coast from and including those in the State of Virginia, southward, and from all United States ports of arrival on the Gulf of Mexico including ports in Puerto Rico. The San Francisco unit processes vessel repair entries received from all ports of entry on the Pacific Coast including those in Alaska and Hawaii.

(h) *Justifications for relief from duty.* Claims for relief from the assessment of vessel repair duties may be submitted to Customs. Relief may be sought under paragraphs (a), (d), (e), or (h) of the vessel repair statute (19 U.S.C. 1466(a), (d), (e), or (h)), each paragraph of which relates to a different type of claim as further specified in paragraphs (h)(1)–(h)(4) of this section.

(1) *Relief under 19 U.S.C. 1466(a).* Requests for relief from duty under 19 U.S.C. 1466(a) consist of claims that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute or as determined under judicial or administrative interpretations. Example: a claim that the shipyard operation is a vessel modification.

(2) *Relief from duty under 19 U.S.C. 1466(d).* Requests for relief from duty under 19 U.S.C. 1466(d) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty.* Relief will be granted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase such equipment or make those repairs as are necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. For the purposes of this paragraph, a "casualty" does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents.* Relief will be granted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced in the United States and were purchased in the United States by the owner of the vessel. It is required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installations.

(iii) *Dunnage.* Relief will be granted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(3) *Relief under 19 U.S.C. 1466(e).* Requests for relief from duty under 19 U.S.C. 1466(e) relate in pertinent part to matters involving vessels normally subject to the vessel repair statute, but that continuously remain outside the United States for two years or longer. Vessels that continuously remain outside the United States for two years or longer may qualify for relief from duty on expenditures made later than the first six months of their absence. See paragraph (b)(3)(ii) of this section.

(4) *Relief under 19 U.S.C. 1466(h).* Requests for relief from duty under 19 U.S.C. 1466(h) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) *Expenditures on LASH barges.* Relief will be granted with respect to the cost of equipment, parts, materials, or repair labor for Lighter Aboard Ship (LASH) operations accomplished abroad.

(ii) *Certain spare repair parts or materials.* Relief will be granted with respect to the cost of spare repair parts or materials which are certified by the vessel owner or master to be for use on a cargo vessel, but only if duty was previously paid under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States when the article first entered the United States.

(iii) *Certain spare parts necessarily installed on a vessel prior to their first entry into the United States.* Relief will be granted with respect to the cost of spare parts only, which have been necessarily installed prior to their first entry into the United States with duty payment under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States.

(i) *General procedures for seeking relief.*

(1) *Applications for Relief.* Relief from the assessment of vessel repair duty will not be granted unless an Application for Relief is filed with Customs. Relief will not be granted based merely upon a claim for relief made at the time of entry under paragraph (e) of this section. The filing of an Application for Relief is not required, nor is one required to be presented in any particular format, but if filed it must clearly present the legal basis for granting relief, as specified in paragraph (h) of this section. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in paragraphs (i)(1)(i)–(vi) and (i)(2) of this section. Except as further provided in this paragraph, the deadline for receipt of an Application and supporting evidence is 90 calendar days from the date that the vessel first arrived in the United States following foreign operations. The provisions for extension of the period for filing required evidence in support of an entry, as set forth in paragraph (f) of this section, are applicable to extension of the time period for filing Applications for Relief as well. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Entry Procedures and Carriers Branch in Customs Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to any potential claims for relief from duty (see paragraph (h) of this section). Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which a request for relief is made must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any United States Government agency other than Customs regarding the operation of the vessel that are relevant to the request for relief.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language, they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the applicant will be notified of the right to protest any adverse decision.

(3) *Administrative protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed under 19 U.S.C. 1514(a)(2) as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter. In particular, the applicable protest period will begin on the date of the issuance of the decision giving rise to the protest as reflected on the relevant correspondence from the appropriate VRU.

(j) *Penalties.*—(1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and is recoverable from the owner (see § 162.72 of this chapter).

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person will be subject to the criminal penalties provided for in 18 U.S.C. 1001.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;

Section 159.46 also issued under 19 U.S.C. 1304;

Section 159.55 also issued under 19 U.S.C. 1558;

Section 159.57 also issued under 19 U.S.C. 1516.

PART 159—[AMENDED]

2. Part 159 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 159.4–159.7, 159.21–159.22, 159.44, 159.46, 159.55, and 159.57.

3. Section 159.1 is revised to read as follows:

§ 159.1 Definition of liquidation.

Liquidation means the final computation or ascertainment of the duties (not including vessel repair duties) or drawback accruing on an entry.

4. Section 159.2 is amended by adding a sentence to read as follows:

§ 159.2 Liquidation required.

* * * Vessel repair entries are not subject to liquidation under this part (see § 4.14(i)(3) of this chapter).

5. Section 159.11(b) is amended by removing the phrase, "vessel repair entries or".

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	*	*
§ 4.14	Vessel repair declaration and entry	1515–0082
*	*	*

Approved: March 6, 2001.

Raymond W. Kelly,

Commissioner of Customs.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–7325 Filed 3–23–01; 8:45 am]

BILLING CODE 4920–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001

AGENCY: Department of Defense.

ACTION: Interim final rule; correction.

SUMMARY: On Friday, February 9, 2001 (66 FR 9651), the Department of Defense published an interim final rule on Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001. This document is published to make administrative corrections to the rule.

DATES: This rule is effective April 1, 2001.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, 303–676–3801.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

2. Section 199.3 is amended by redesignating paragraphs (b)(4) and (b)(5) as (b)(3) and (b)(4).

3. Section 199.18(d)(1) is amended by revising the phrase "on or before" to read "on or after"

4. Section 199.13 amended by revising paragraph (c)(3)(ii)(E)(2) to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Selected Reserve or Individual Ready Reserve. Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Selected Reserve or Individual Ready Reserve members, as specified in 10 U.S.C. 10143 and 10144(b) respectively, who die on or after the implementation date of the TDP, and whose dependents are enrolled in the TDP on the date of the death of the active duty, Selected Reserve or Individual Ready Reserve member shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death. This three-year period of continued enrollment also applies to dependents of active duty members who died within the year prior to the beginning of the TDP while the dependents were enrolled in the TFMDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP.

* * * * *

Dated: March 15, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Department of Defense.

[FR Doc. 01–6999 Filed 3–23–01; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6767–8]

RIN 2060–AJ39

Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Project XL program, the EPA is supporting a project for the Georgia-Pacific Corporation

facility located in Big Island, Virginia. The terms of the project are defined in the "Georgia-Pacific Corporation Big Island, Virginia Project XL Final Project Agreement" (FPA). The EPA is issuing this rule, applicable only to the Georgia-Pacific Big Island facility, to help implement the project.

Under the terms of the FPA, Georgia-Pacific will install and operate the first commercial scale, black liquor gasification system in the United States. Use of this system will provide superior air emissions reductions and energy benefits compared to the use of conventional technology for recovering pulping chemicals from black liquor wastes in the pulp and paper industry. Once installed and successfully operating, the black liquor gasification system is expected to easily meet emission standards that apply (specifically the National Emission Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, promulgated in the **Federal Register** on January 12, 2001 (66 FR 3179)). However, since the system will be the first demonstrated on a commercial scale in the United States, there is some risk that it ultimately will not operate successfully. If this event occurs, Georgia-Pacific may require temporary relief from the otherwise applicable emissions standards. Without this relief, Georgia-Pacific would not proceed to commercialize the gasification technology. This action provides a limited extension to the date of compliance with the standards for the Big Island facility if the system is not successful.

DATES: This direct final rule will be effective on June 25, 2001, without further notice, unless EPA receives adverse comments by April 25, 2001. Written comments must be received by April 25, 2001. Anyone requesting a public hearing must contact the EPA no later than April 5, 2001. If a public hearing is held, it will be on April 28, 2001, at 10:00 a.m. Requests to present oral testimony must be made by April 16, 2001. Persons interested in requesting a hearing, attending a hearing, or presenting oral testimony at a hearing should call Mr. David Beck at (919) 541–5421. If we receive any adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–42, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–42, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Comments also may be submitted electronically by sending electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on diskette in WordPerfect or ASCII file format. All comments in electronic form must be identified by the docket number (No. A–2000–42). No confidential business information should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

If a public hearing is held, it will take place at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Office of Environmental Policy Innovation (MD–10), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5421, e-mail: beck.david@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is publishing this rule without prior proposal because we view this as a noncontroversial rule and do not anticipate adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal in the event adverse comments are filed. This rule will be effective on June 25, 2001, without further notice unless we receive any adverse comment by April 25, 2001. The amendment provision for extended compliance times for Georgia-Pacific's Big Island facility, as described in the XL project FPA, is crucial to the company's plan to commercialize black liquor gasification. Given the economic and environmental benefits presented by this technology, its use could eventually become widespread in the pulp and paper industry. The draft FPA, including all details of the project, was made available for public comment through a **Federal Register** notice on May 8, 2000 (65 FR 26606). No adverse comments were received as a result of that notice, and the FPA subsequently was signed by the EPA, the U.S. Department of Agriculture (USDA) Forest Service, Georgia-Pacific, and Virginia's Department of Environmental Quality.

Outline

I. Overview

A. Project XL

This site-specific regulation will help implement a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—Excellence and Leadership—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection (60 CFR 27282, May 23, 1995). Project XL provides private and public regulated entities an opportunity to develop a limited number of their own pilot projects, which afford them regulatory flexibility but also produce environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to

other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies, and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have the full support of affected Federal, state and tribal agencies to be selected. For more information about the XL criteria, readers should refer to 60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997, and the September 1999 document "A Guide to Writing Final Project Agreements under Project XL."

The XL program is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than otherwise would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal the EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

The EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the CAA.

Each XL project relies on the input from a project stakeholder group, which usually includes representatives from the project sponsor, EPA, the involved State environmental agency, environmental groups, local community representatives, and other parties with an interest in the project. The stakeholder group works out the provisions of the FPA, which includes the details of the project, a timetable for completion, and the responsibilities of the signatories. The FPA is a statement of the plans and intentions of each signatory with respect to the project, but is not a legally binding document. The stakeholder group for the Georgia-Pacific project included representatives from the EPA, the Virginia Department of Environmental Quality, the USDA Forest Service, the U.S. Department of Energy (DOE), a local environmental group, the Big Island community, and, of course, Georgia-Pacific. A notice that the draft FPA for the Georgia-Pacific project was available for public comment appeared in the **Federal Register** on May 8, 2000. No comments were received on the draft FPA, and the final FPA was signed on May 31, 2000 by Georgia-Pacific, the EPA, the Virginia Department of Environmental Quality, and the USDA Forest Service (the final FPA has been posted on EPA's website at: *http://www.epa.gov/ProjectXL/georgia/index.htm*). In the agreement, EPA committed to undertake this rulemaking.

B. Georgia-Pacific Project Description

Georgia-Pacific owns and operates a non-sulfur, non-bleaching pulp and paper mill at Big Island, Virginia. The facility produces two products: corrugating medium, which is used by box manufacturing plants to make the fluted inner layer of corrugated boxes; and linerboard, which is used for the inside and outside layers of the boxes. Corrugating medium is made from semi-chemical (sodium carbonate/sodium hydroxide) hardwood pulp and secondary (recycled) fiber, and linerboard is made from fiber recycled from old corrugated containers, clippings and rejects from corrugated container manufacturing plants, and some mixed office waste paper. The secondary fiber operations supply 100 percent of the fiber for the linerboard mill and about 20 percent of the fiber for the corrugating medium mill. Overall, the mill produces an average 870 tons per day of corrugating medium and 730 tons per day of linerboard.

The mill is located in Bedford County, adjacent to the James River and approximately 20 miles northwest of Lynchburg, Virginia. A principal concern for this area is air quality due to the close proximity of the James River Face Wilderness. The James River Face Wilderness is about 3 miles to the northwest of the mill and under the CAA was classified a Federal Class I air quality area. The USDA Forest Service, a signatory to the FPA, is the designated Federal Land Manager for assuring that the air quality related values for this Class I area are maintained.

The population of Big Island is approximately 400. The population within a 5-mile radius is about 2,100. Within a 25-mile radius of the mill (which includes the city of Lynchburg) is a population of approximately 111,500.

The mill currently handles the spent ("black") liquor from wood pulping operations by reducing liquor water content using a conventional multiple effect evaporation train and combusting the concentrated (about 60 percent solids) liquor in two smelters. Molten smelt is drawn from the smelters and dissolved in water to recover the sodium carbonate. This solution is used to make up the cooking liquor added to the hardwood chips going to the digesters (cooking vessels) to produce the pulp. Exhaust gases from the smelters pass through a venturi scrubber and are then discharged to the atmosphere.

The mill currently is subject to two emission standards. The first is the so-called "Cluster Rule," promulgated on

April 15, 1998 (40 CFR part 63 subpart S) under the CAA. That rule sets performance standards for regulated emission sources in pulp and paper production plants and is based on maximum achievable control technology (MACT). A second MACT based standard applicable to pulp and paper mills (National Emission Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills or "MACT II"), was promulgated in the **Federal Register** on January 12, 2001 (66 FR 3179) specifically to address hazardous air pollutant emissions from combustion sources associated with the recovery of pulping chemicals. Georgia-Pacific's two existing smelters (a type of semi-chemical combustion unit) are subject to the second rule.

The MACT II rule contains a performance standard to be met, but does not specify a particular technology that must be used. The current emissions from Georgia-Pacific's two existing smelters at Big Island are above the HAP emission standard in the MACT II rule. For Georgia-Pacific's Big Island facility to meet the standard in the MACT II rule, the smelters would have to be upgraded substantially. The age and physical condition of the smelters dictates that they either be rebuilt with additional emission control devices or replaced, such as with a conventional recovery boiler commonly used in the industry. Of these two options, Georgia-Pacific would choose to replace the smelters with conventional recovery technology. However, Georgia-Pacific also investigated a third alternative for chemical recovery, replacing the smelters with a PulseEnhanced™, steam reforming black liquor gasification system, developed by Stone Chem, Inc. This technology uses steam reforming to convert the organics in black liquor to a hydrogen-rich gas fuel, leaving the residual pulping chemicals (primarily sodium carbonate) for reuse. The gas can then be used as a clean burning energy source for heat in the gasification unit and as an alternative boiler fuel, replacing fossil-fuel based (non-renewable) natural gas. Implementation of such a gasification system is expected to allow the Big Island facility to reduce emissions well below the MACT II HAP emission standards, and to significantly lower emissions of other criteria pollutants, compared to installation of conventional technology.

The signatories to the FPA believe that gasification of black liquor represents a new and better approach for the chemical recovery process and eliminates many of the deficiencies of the conventional recovery furnace and fluid bed combustion technologies. The benefits of gasification to the paper industry generally are expected to include: increased efficiency in energy conversion and chemical recovery, elimination of the smelt-water explosion hazard, reduced operation and maintenance costs, and significantly lower environmental emissions. The emissions expected to be reduced include: particulates (PM, PM_{10}), sulfur dioxide (SO_2), total reduced sulfur (TRS), nitrogen oxides (NO_X), volatile organic compounds (VOC), carbon monoxide (CO), hazardous air pollutants (HAP), and greenhouse gases, specifically carbon dioxide (CO_2). These benefits are particularly attractive to pulp mills such as Georgia-Pacific's at Big Island that use a semi-chemical non-sulfur process that requires auxiliary fossil fuel to sustain combustion of the black liquor. Projected benefits to the Big Island facility and surrounding areas include significant reductions in NO_X, VOC, CO, and particulates. Table 1 below is taken from the FPA and compares actual emissions from the existing smelters to estimated emissions from use of conventional recovery boiler technology and a new gasification system.

Note: The emissions are based on combustion of 400,000 lbs per day of black liquor solids).

Although HAP emissions are not listed separately in the table, the HAPs emitted at the facility are organic and, therefore, included in the value for VOC.

TABLE 1.—EMISSIONS COMPARISON OF CHEMICAL RECOVERY UNITS

[Tons/yr]

Pollutant	Existing smelters	Conventional boiler	Gasification system
NO_X	168	90.4	19.3
SO_2	13	10.3	1.1
CO	7,592	146.1	11.7
CO_2	103,450	117,800	96,662
VOC	1,646	7.5	0.88
Particulates	440	14.8	1.88

Although Georgia-Pacific's feasibility analysis indicated the risks of attempting to construct and operate the new technology would be within acceptable limits from a technical standpoint, the company had two other concerns. The first concern was the cost of the project. Estimated costs to complete a gasification project, the first of its kind, were quite high and considerably more than costs for installing a new conventional recovery boiler. Therefore, Georgia-Pacific sought and has received some co-funding help from the U.S. Department of Energy (DOE). The second concern involved compliance with the MACT II rule. With this demonstration of a new technology come risks that the technology ultimately will not be successful. If this situation occurs, Georgia-Pacific may not have a functioning replacement for their smelters in time to meet the MACT II compliance date, which is March 13, 2004. Therefore, the FPA for this XL project contains EPA's commitment to undertake a rulemaking to provide temporary relief from the MACT II compliance date for this situation (and also for a defined time period in which Georgia-Pacific will run the new gasification system on black liquor from a Kraft pulp mill, to fulfill an obligation under their funding agreement with DOE). The nature of this relief and the rationale for it are discussed more fully in section III.B of this preamble.

As indicated by the schedule in the FPA, Georgia-Pacific has begun preliminary construction activities at Big Island for the black liquor gasification system. The construction schedule calls for completion of equipment installation by August 30, 2002 and completion of activities leading to startup by September 1, 2003. Of course this schedule is subject to some uncertainties, especially

considering the technology is being installed for the first time at this scale. Delays may occur not only in the procurement and installation of equipment, but also in the start-up of the system. The system is complex, and individual components must be operated and adjusted before the entire system can be started. Georgia-Pacific anticipates additional adjustments as operation of the entire system is attempted and as production is gradually increased toward capacity.

If the gasification system cannot be operated successfully, Georgia-Pacific will construct a conventional recovery boiler. This will take approximately three years from the time the gasification system is declared a failure. After either successfully starting up the gasification system and conducting the Kraft liquor trials or declaring the gasification system a failure and constructing and starting up a conventional recovery boiler, Georgia-Pacific will shut down and decommission the existing smelters.

II. Amendments to the MACT II Rule

A. Georgia-Pacific's Flexibility Need

There are no current full-scale commercial applications of the black liquor, steam-reforming gasification technology of the type proposed by Georgia-Pacific. Therefore, there is a risk that the gasification system will fail. Although Georgia-Pacific considers this an unlikely occurrence, it is possible that despite Georgia-Pacific's best efforts, the system may never perform as expected or to a level sufficient to warrant continued operation. If this happens, Georgia-Pacific will construct a standard chemical recovery boiler in lieu of a gasification system to comply with MACT II, and will need to continue to operate the existing smelters while the standard recovery boiler is constructed. For this situation also, Georgia-Pacific requested the flexibility to operate the existing smelters past the MACT II compliance date for existing sources.

In addition to the situation described above, Georgia-Pacific requested the flexibility to operate the existing smelters for a short time after the MACT II compliance date, as necessary, to allow Georgia-Pacific to conduct limited trials of the new gasification system on black liquor from a Kraft pulp mill. Kraft mill black liquor has characteristics different from those of the liquor generated by Georgia-Pacific's semi-chemical pulp mill. The Department of Energy is interested, as is EPA, in the potential for widespread use of the gasification technology in the pulp and paper industry. However, the vast majority of pulp mills are of the Kraft type, and only a dozen or so mills in the U.S. are of the semi-chemical type. Therefore, the Department of Energy, in their contract with Georgia-Pacific to fund part of the cost of the gasification system, requested the trials to see how well the new technology could handle Kraft black liquor.

Georgia-Pacific has not requested any other Federal regulatory flexibility. The company intends to comply with all other CAA requirements, including those for new source review of the gasification system construction.

B. Rule Changes

The amendments to the MACT II rule to help implement the Georgia-Pacific XL project are discussed below.

Note: As is the case with other Federal emission standards, EPA intends to delegate authority to implement the provisions of the MACT II rule to the States, and these amendments specifically to Virginia.

1. Definitions

The startup of a new emissions unit is an important event because it defines the point in time that the new unit must be in compliance with an applicable hazardous air pollutant standard. The General Provisions for part 63 (40 CFR part 63 subpart A) defines startup as follows: "Startup means the setting in operation of an affected source for any purpose." This definition would apply to the startup of the gasification system at Big Island. Georgia-Pacific raised a concern with this general definition, particularly with the possible connotation of operation "for any purpose." Under this definition, the company felt that the gasification system could be deemed by an enforcement agency to have achieved "startup" before the many components operated together as a system and within the specifications of the manufacturer. Startup of the new gasification system at Big Island likely will occur only after a protracted period of operating and adjusting the many parts of the system, first individually and then all together; a period Georgia-Pacific calls commissioning. The EPA agrees, in this instance, that the General Provisions definition of startup could lead to some confusion as to when startup occurs, especially considering that this new, complex gasification technology has never been started up before on a commercial scale. Therefore, a definition of "startup" applying only to the gasification system at Big Island, has been added to § 63.861—Definitions. The definition makes clear that startup of the new gasification unit will occur at the end of the commissioning period.

2. Compliance Extensions

Paragraph (c) is added to § 63.863—Compliance Dates to allow compliance date extensions for the Georgia-Pacific Big Island plant in the event of failure of the gasification system and also during the time of the Kraft liquor trials. The compliance extensions are described more fully below.

In the event the gasification system is a failure, the amendments provide Georgia-Pacific a compliance extension for the existing smelters of up to three years from the date the gasification system is declared a failure, but no later than March 1, 2007. The three years provides the company time to build and start up a new conventional recovery boiler to replace the existing smelters. March 1, 2007 is the longest possible duration of the extension, since it is three years after the latest date Georgia-Pacific agreed to declare that the system has failed. To obtain this extension, Georgia-Pacific must provide a notice to the Administrator stating that the system has failed and describing the events leading to that declaration.

Finally, Georgia-Pacific, according to their contract with the Department of Energy, must operate the new gasification system for up to 500 hours using black liquor from a donor Kraft pulp mill. While the gasification system is processing Kraft liquor, the existing smelters must operate to process the black liquor generated by the Big Island plant. Although the Kraft trials will last up to 500 hours, the trials may not run continuously for that period of time. Separate trials may last only a few hours. Between trials various system components may be adjusted in an effort to improve system performance or find optimum performance. Therefore, the total elapsed time to accumulate up to 500 hours of Kraft liquor trials may be as high as 1500 consecutive hours. The smelters must operate during this entire period. If the trials occur after the MACT II compliance date, the amendments allow the existing smelters to operate for up to 1500 hours during the Kraft trials, without the MACT II standard applying. Prior to conducting Kraft liquor trials, Georgia-Pacific must notify the Administrator of the 1500-hour time period in which it intends to conduct the trials (and operate the existing smelters).

3. Recordkeeping and Reporting Requirements

Under § 63.866—Recordkeeping requirements, a new paragraph ((c)(7)) requires Georgia-Pacific to record the

hours the existing smelters operate during the Kraft liquor trials. This requirement will allow enforcement of the 1500 maximum duration of a compliance waiver for the existing smelters during Kraft liquor trials.

Paragraph (a)(2) has been added to § 63.867—Reporting requirements—to specify notices Georgia-Pacific must send to the EPA Administrator (or his/her authorized representative, such as a State that has been delegated authority to implement the provisions of the rule), prior to invoking one of the compliance extensions.

To obtain the three year extension to build a conventional recovery unit in the event the gasification system fails, Georgia-Pacific must submit a notice providing the date the company declared the system a failure and the reasons why the technology was not successful. The decision to declare the new gasification system a failure rests with Georgia-Pacific alone, since only the company will know the technical information pertaining to failure of the system. Although the decision is theirs, Georgia-Pacific will declare the system a failure only after exhausting all possibilities for success and only as a last resort. Despite funding help from DOE, the company will be spending tens of millions of dollars on the gasification system, and failure of the system means Georgia-Pacific will have to spend additional tens of millions of dollars to scrap the failed system and construct a conventional recovery boiler. Thus, the company has considerable incentive to make the technology work.

Also, prior to conducting any trials using Kraft black liquor, Georgia-Pacific must submit a notice that: (1) Identifies the period in which the trials will take place and (2) explains why the trials could not be run prior to the compliance date applicable to the existing smelters.

C. Rationale for the Compliance Flexibility

For certain defined circumstances (see sections III.B.2 and III.B.3 of this preamble), the rule amendments allow Georgia-Pacific to operate their existing smelters beyond the MACT II standard's compliance date, which is 3 years after the effective date of the standard. Of course, EPA is aware that section 112(i)(3)(A) of the CAA states that compliance with a MACT standard shall be no later than 3 years from the standard's effective date. However, EPA notes that the special circumstances in this instance warrant the flexibility.

First, as described above, without this flexibility, Georgia-Pacific would not proceed to construct the black liquor gasification system. The new gasification system, if successful at Georgia-Pacific's Big Island facility, is expected to produce significant environmental benefits, including reductions in emissions of all regulated air pollutants. These reductions extend beyond those expected from conventional recovery boilers, which are commonly used in the industry and can meet the MACT II standard. (See section II.B.2 of this preamble for a discussion of emission reduction benefits.)

These emission reduction benefits include the effects of the gasification system's greater energy efficiency. The system will convert black liquor into a hydrogen rich gas. Some of this gas will be used to fuel the pulsed heaters providing energy to the gasification process and the remaining gas will be combusted in a boiler to produce steam. Steam generated by the gasification system will offset steam currently generated at Big Island by fossil fuel combustion. Although a conventional recovery boiler also will produce steam, the gasification system at Georgia-Pacific's Big Island facility is expected to do so with somewhat greater energy efficiency, lower air pollution levels, and significantly lower annual operating costs.

Successful completion of this XL project will show this technology to be capable of providing full chemical recovery capacity for a semi-chemical mill. This includes demonstration of the reliability and operational flexibility of the gasification system and all of the associated equipment. Once the technology is demonstrated, the industry can apply it at other pulp and paper facilities to obtain better energy conversion, improved safety, and environmental performance. The Big Island semi-chemical mill is similar in characteristics to 12 other mills in the U.S. producing virgin pulp for containers. Success of black liquor gasification at Big Island and success of the scheduled Kraft liquor trials will contribute significantly to its implementation in the much larger number of Kraft mills. Success also may pave the way for commercial scale application of gasification to the conversion of non-wood liquors, sludges, and agricultural wastes to energy.

In addition to producing steam, gasification technology could be used to generate onsite electricity, thereby offsetting a pulp mill's demand for electricity purchased from the utility grid. By configuring the black liquor gasification system to burn the product gas in a combined cycle gas turbine system, the energy released would be harnessed to generate clean electricity. Although Georgia-Pacific's facility at Big Island is not large enough to make combined cycle energy production economically viable, Kraft process pulp mills in the U.S. are large enough. For a Kraft facility employing black liquor gasification and combined cycle energy production, the reduction in fossil fuel use and greenhouse gas generation would be dramatic.

Compared to average utility grid emissions, generating electricity from a gasification unit would result in lower emissions of combustion related air pollutants. Displacing old, coal based utility boilers with a biomass based fuel, in this instance black liquor, would significantly lower emissions of CO_2, a pervasive greenhouse gas that can contribute to global climate change. When this technology is successfully demonstrated with combined cycle energy generation and assuming utilization of currently available biomass, studies show that the energy savings could transform the domestic Pulp and Paper Industry from being a net importer of 6 gigawatts of electrical power to a net exporter. The studies also indicate that successful development and deployment of gasification technology would result in a decrease in greenhouse gas emissions of 18 million metric tons per year.

(SOURCE: The Forest Products Industry Gasification Combined Cycle Initiative, American Forest & Paper Association (AF&PA) Agenda 2020, July 1998, *www.agenda2020.org*).

Over the next 10 to 15 years, the industry expects that a large fraction of the existing conventional chemical recovery boilers will reach the end of their useful life and have to be replaced. If black liquor gasification has become a proven technology by the time replacement decisions are made, a large-scale conversion to the new technology could occur.

Beyond the environmental and energy benefits described above, black liquor gasification has a safety benefit over conventional chemical recovery technology. In the gasification process, concentrated black liquor is pyrolyzed in a fluid bed gasifier through indirectly applied heat, liberating a hydrogen rich gas. Sodium carbonate pellets formed during the pyrolysis are drawn from the fluidized bed into a dissolving tank to reconstitute "green" liquor for recycle to the pulping process. Other gasification or conventional recovery technologies employ flame combustion within a reactor vessel or an intermediate smelt phase. The formation of smelt carries the potential for smelt-water explosions,

which are a major safety concern in the operation of conventional recovery boilers. The steam reforming, black liquor gasification process to be constructed at Big Island does not produce a smelt phase and, thus, eliminates the potential for smelt-water explosions.

In short, EPA sees that significant environmental, economic, and safety benefits would accrue from successful completion of this XL project, not only at the Big Island plant but potentially nationwide. Nonetheless, these potential benefits must be measured against any potential adverse effects from undertaking the project. Under this project, the potential exists for operation of the existing smelters at Big Island beyond the time they otherwise would have been shut down. Specifically, during the project and under certain situations, current HAP emissions from the existing smelters may continue beyond the MACT II compliance date (March 13, 2004). As stated before, current smelter HAP emissions are above those that would be allowed under the MACT II standard. Without this XL project, Georgia-Pacific would replace the smelters with conventional chemical recovery technology on or before the compliance date. The amounts of "excess" smelter emissions that actually will occur under this XL project depend on how well the construction and startup of the gasification system proceeds.

It is quite possible that Georgia-Pacific will be able to construct and successfully start up the unit according to their current schedule, which allows for several months of commissioning activities leading to startup. Under such a scenario, Georgia-Pacific could shut down the smelters before the MACT II compliance date and not need any compliance flexibility.

Even if Georgia-Pacific is able to start up the new system according to schedule, it is probable that the Kraft liquor trials will occur, at least in part, after the MACT II compliance date. These trials cannot be run until Georgia-Pacific has started up the gasification system and run it for some period under stable operation. Therefore, it is likely that the Kraft trials will require the smelters to operate for up to 1500 hours after the compliance date.

The worst case scenario, which also is the least likely, occurs if Georgia-Pacific is unable to successfully operate the gasification system. If this occurs, Georgia-Pacific would have to construct a new conventional recovery boiler, and would be allowed up to three years to do so. Under such a scenario, the existing smelters would operate until the new conventional unit has achieved startup, which could be as long as March 1, 2007.

Of all the possibilities, the most probable scenario is that the new gasification system will be started up prior to the MACT II compliance date, but the Kraft liquor trials will occur after that date. This means that the greatest likelihood is that the public surrounding the Big Island facility will experience smelter emissions up to 1500 hours longer than they would without this XL project, of course with the prospect of much lower emissions from success of the gasification system.

In summary, the Agency has considered the expected environmental and energy benefits, safety improvement, reduced operation and maintenance costs, and high potential for transfer to the rest of the pulp and paper industry expected from a successful demonstration of the black liquor gasification technology at Georgia-Pacific's Big Island facility. The Agency also has weighed the possibility of allowing the existing emissions from the smelters, which are higher than allowed by the MACT II standard, to persist for a limited time beyond the MACT II compliance date. Finally, the Agency has noted the solid support for the project from all stakeholders involved in the project, including those representing the communities near the Big Island plant. Based on all available information, the Agency has concluded that it is in the best interest of the environment and public health and welfare to grant the regulatory flexibility requested by Georgia-Pacific to undertake this XL project. In the event that the gasification technology should fail, the Agency would regard the Georgia-Pacific mill as a different type of mill essentially part of its own subcategory—a mill that had attempted to operate using a method of pulping liquor recovery—gasification—different from that used by any other source. In the event of failure of gasification, this unique source would then be accorded the statutory 3 year compliance period to use conventional recovery boiler technology to achieve the MACT II emission standard. In addition, as EPA indicated in the MACT I rule, there are rare circumstances where the three year compliance date can serve as such a disincentive to pollution control as to no longer properly be considered MACT. See 63 **Federal Register** at 18527–528 (acting to avoid discouraging mills from installing advanced water treatment technologies). EPA is similarly acting here to assure that the compliance date not serve as a disincentive to the potentially great benefits of gasification technology. (This same rationale serves to justify any potential compliance extension needed to test the new gasification unit at Big Island, Virginia on kraft mill black liquor.)

The compliance flexibility afforded by these amendments to the MACT II rule is limited to the existing smelters at the Big Island facility, and only for this XL demonstration project.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

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

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule would not have a significant impact on a substantial number of small entities because it only affects one source, the Georgia-Pacific plant at Big Island, VA, which is not a small entity. Therefore, I conclude that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, 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 the 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.

As noted above, this rule is limited to Georgia-Pacific's plant in Big Island, Virginia. The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with the Virginia Department of Environmental Quality and received meaningful and timely input in the development of this rule. The EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health 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. The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866, and in fact applies only to one source, Georgia-Pacific's facility in Big Island, Virginia. Additionally, this action promotes lower emissions compared to the emissions that would otherwise exist at that facility.

F. 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 direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule amends a previously established compliance date, under certain circumstances, for one entity, Georgia-Pacific Corporation's facility in Big Island, Virginia. Thus, this rule does not create any mandates nor impose any enforceable duties on the States in general or the Commonwealth of Virginia specifically. It also will not affect the national government's relationship with the States or the distribution of power among various levels of government. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in developing this rule, EPA worked closely with the Virginia Department of Environmental Quality and received meaningful and timely input in the development of this rule.

G. 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 direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This direct final rule affects only the Georgia-Pacific Corporation's facility in Big Island, Virginia. It does not affect any communities of Indian tribal governments and there are no such communities located in the vicinity of the Georgia-Pacific facility. Thus, Executive Order 13175 does not apply to this rule.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Public Law 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

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

I. 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 today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 20, 2001.

Christine Todd Whitman,

Administrator.

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

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANT SOURCE CATEGORIES

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

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants; Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

2. Amend § 63.861 by adding in alphabetical order a definition for "Startup" to read as follows:

§ 63.861 Definitions.

* * * * *

Startup means, for the chemical recovery system employing black liquor gasification at Georgia-Pacific's facility in Big Island, Virginia only, the end of the gasification system commissioning phase. Commissioning is that period of time in which each part of the new gasification system will be checked and operated on its own to make sure it is installed and functions properly. Commissioning will conclude with the successful completion of the gasification technology supplier's performance warranty demonstration, which proves the technology and equipment are performing to warranted levels and the system is ready to be placed in active service. For all other affected sources under this subpart, startup has the meaning given in § 63.2.

* * * * *

3. Amend § 63.863 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 63.863 Compliance dates.

(a) The owner or operator of an existing affected source or process unit must comply with the requirements in this subpart no later than March 13, 2004, except as provided in paragraph (c) of this section.

* * * * *

(c) The two existing semichemical combustion units at Georgia-Pacific Corporation's Big Island, VA facility must comply with the requirements of this subpart no later than March 13, 2004, except as provided in paragraphs (c)(1) and (c)(2) of this section.

(1) If Georgia-Pacific Corporation constructs a new black liquor gasification system at Big Island, VA, determines that its attempt to start up the new system has been a failure and, therefore, must construct another type of chemical recovery unit to replace the two existing semichemical combustion units at Big Island, then the two existing semichemical combustion units must comply with the requirements of this subpart by the earliest of the following dates: three years after Georgia-Pacific declares the gasification system a failure, upon startup of the new replacement unit(s), or March 1, 2007.

(2) After March 13, 2004 and if Georgia-Pacific Corporation constructs and successfully starts up a new black liquor gasification system, the provisions of this subpart will not apply to the two existing semichemical combustion units at Georgia-Pacific's facility in Big Island, VA for up to 1500 hours, while Georgia-Pacific conducts trials of the new gasification system on black liquor from a Kraft pulp mill.

* * * * *

4. Amend § 63.866 by adding paragraph (d) to read as follows:

§ 63.866 Recordkeeping requirements.

* * * * *

(d) For operation under § 63.863(c)(2), Georgia-Pacific Corporation must keep a record of the hours of operation of the two existing semichemical combustion units at their Big Island, VA facility.

* * * * *

5. Amend § 63.867 by revising paragraph (a) to read as follows:

§ 63.867 Reporting requirements.

(a) Notifications. (1) The owner or operator of any affected source or process unit must submit the applicable notifications from subpart A of this part, as specified in Table 1 of this subpart.

(2) Notifications specific to Georgia-Pacific Corporation's affected sources in Big Island, Virginia.

(i) For a compliance extension under § 63.863(c)(1), submit a notice that provides the date of Georgia-Pacific's determination that the black liquor gasification system is not successful and the reasons why the technology was not successful. The notice must be submitted within 15 days of Georgia-Pacific's determination, but not later than March 16, 2004.

(ii) For operation under § 63.863(c)(2), submit a notice providing: a statement that Georgia-Pacific Corporation intends to run the Kraft black liquor trials, the anticipated period in which the trials will take place, and a statement explaining why the trials could not be conducted prior to March 13, 2004. The notice must be submitted at least 30 days prior to the start of the Kraft liquor trials.

* * * * *

6. Amend Table 1 to Subpart MM by revising the entries for "63.6(c)" and "63.6(i)" to read as follows:

* * * * *

TABLE 1 TO SUBPART MM.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
* *	* *	* *	* *
63.6(c)	Compliance dates for existing sources.	Yes, except for sources granted extensions under 63.863(c).	Subpart MM specifically stipulates the compliance schedule for existing sources.
* *	* *	* *	* *
63.6(i)	Extension of compliance with emission standards.	Yes, except for sources granted extensions under 63.863(c).	
* *	* *	* *	* *

* * * * *

[FR Doc. 01–7399 Filed 3–23–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 032001B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District in the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the West Yakutat District in the Gulf of Alaska (GOA). This action is necessary to fully use the 2001 total allowable catch (TAC) of pollock.

DATES: Effective 1200 hrs, Alaska local time, March 21, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 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 amount of the 2001 pollock TAC in the West Yakutat District of the GOA was established as 2,235 metric tons by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

NMFS closed the directed fishery for pollock in the West Yakutat District of the GOA under § 679.20(d)(1)(iii) on March 15, 2001 (66 FR 15359, March 19, 2001).

NMFS has determined that currently, approximately 500 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in the West Yakutat District of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow full use of the pollock TAC constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow full use of the pollock TAC constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. In addition, this action relieves a restriction on the harvest of pollock in the West Yakutat District of the Gulf of Alaska. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 21, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–7414 Filed 3–21–01; 2:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 032001D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock In Statistical Area 610 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment opening the B fishing season for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 12 hours effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2001, until 2400 hrs, A.l.t., March 21, 2001. This adjustment is necessary to prevent the under harvest of the B seasonal allowance of the pollock total allowable catch (TAC) in Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, A.l.t., March 21, 2001, until 2400 hrs, A.l.t., March 21, 2001. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 5, 2001.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 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.

NMFS issued a prohibition to directed fishing for pollock effective March 16, 2001, for Statistical Area 610, in accordance with § 679.20(d)(1)(iii) (66 FR 15359, March 19, 2001).

As of March 19, 2001, 600 metric tons (mt) of pollock remain in the B seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA. Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component in Statistical Area 610 of the GOA is about 1,200 mt per day. The Administrator, Alaska Region, NMFS, has determined that the B seasonal allowance of the pollock TAC could be exceeded if a 24-hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, will not allow a 24-hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i)and § 679.25(a)(2)(i), is adjusting the B fishing season for pollock in Statistical Area 610 of the GOA by opening the fishery at 1200 hrs, A.l.t., March 21, 2001, and closing the fishery at 2400 hrs, A.l.t., March 21, 2001, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 12 hours. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the B seasonal allowance of the pollock TAC designated in accordance with the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) and § 679.20(a)(5)(ii)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., March 21, 2001, after a 12-hour opening is the least restrictive management adjustment to achieve the B seasonal allowance of the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow full utilization of the pollock TAC constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow full utilization of the pollock TAC constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. In addition, this action relieves a restriction on the harvest of pollock in statistical area 610. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Without this inseason adjustment, NMFS could not allow the B seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 5, 2001.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 21, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–7413 Filed 3–21–01; 2:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 031301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska; Correction

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

ACTION: Closure; correction.

SUMMARY: This document corrects the effective date of the closure for directed pollock fishing in the West Yakutat District of the Gulf of Alaska, which was published in the **Federal Register** on March 19, 2001.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 15, 2001, until 2400 hrs, A.l.t. December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Correction

In the document closing directed fishing for pollock in the West Yakutat District of the Gulf of Alaska, published at 66 FR 15359, March 19, 2001, FR Doc. 01–6728, the following correction is made:

On page 15360, column 1, under the **DATES** heading, line 2, "March 1, 2001" is corrected to read "March 15, 2001".

Dated: March 20, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–7431 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 58
Monday, March 26, 2001

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections to Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to provide for employee participation in the Thrift Savings Plan to begin immediately upon the employee's appointment to a position covered by FERS or CSRS, or an equivalent retirement plan. Beginning July 1, 2001, participants also will be able to transfer into their TSP accounts funds from certain qualified retirement plans or conduit individual retirement accounts (IRAs). In addition, the limitations on employee contributions (as a percentage of basic pay) are phased out over the next 5 years.

DATES: Comments must be received on or before April 25, 2001.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On December 2, 1987, the Board published in the **Federal Register** (52 FR 45802) interim rules concerning the procedures governing the establishment of open seasons and election periods for Federal employees to make or change employee contributions to the TSP. On June 22, 1988, the Board amended sections 1600.3, 1600.10, and 1600.13 (53 FR 23379). On November 4, 1994, the Board published in the **Federal Register** (59 FR 55331) a final rule concerning contribution elections. The Board amended section 1600.1 of the final rule on November 18, 1996 (61 FR 58754) to revise the definition of basic pay.

On October 27, 2000, Congress passed Public Law 106–361. In it, Congress eliminates the waiting period for new and rehired employees to begin making employee contributions. The Act also permits participants to transfer moneys from certain qualified retirement accounts and conduit IRAs into their TSP accounts. Also, on December 21, 2000, Congress passed the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554, which includes a provision changing the limits on FERS and CSRS TSP employee contributions (i.e., 10 and 5 percent of basic pay, respectively) by raising the percentage limitation one percent each year until 2006, when the limits are removed altogether. However, the Internal Revenue Code annual limits on elective deferrals, I.R.C. sections 402(g) and 415(c), will continue to be applicable to TSP contributions. This proposal revises the regulation to incorporate these statutory changes.

Analysis

Subpart A includes definitions that are relevant to contributions; the definition of highly compensated employee in the existing regulation is deleted because it is obsolete.

In subpart B, the Board proposes to combine the portions of existing subparts B, C, and D that relate to contribution elections. The rule deletes obsolete references to the initial open season in 1987, and makes changes necessary to permit immediate employee contributions. It eliminates the requirement that an employee who was previously eligible to participate in the TSP must wait until an open season to make a contribution election. Under the proposed rule, an employee is immediately eligible to make a contribution election for employee contributions. If the employee was previously eligible to receive employer contributions, the employee will also be immediately eligible to receive employer contributions. The proposed regulation makes other changes to differentiate between contribution elections, provided for in this part, and contribution allocations, provided for in part 1601.

In subpart C, the Board proposes to reorganize the provisions of existing subpart C that describe the contributions program in general. The proposed regulation phases out the limits on employee contributions as a percentage of basic pay and explains the Internal Revenue Code's limitations on TSP contributions, which still apply.

The Board proposes to delete the portions of existing subpart D that were not included in proposed subpart B, all of existing subpart E, and § 1600.17 of existing subpart F because they are obsolete. Section 1600.18 of existing subpart F is incorporated into proposed subpart B. The proposed regulation creates a new subpart D which describes the kinds of qualified retirement accounts and conduit IRAs that may be transferred to the TSP, the method by which a transfer may be made, and the treatment accorded such funds in the TSP.

CROSS-REFERENCE TABLES

Old section	New section
1600.1	1600.1
1600.2(a)	Deleted.
1600.2(b)	1600.12(b)
1600.2(c)	1600.15
1600.2(d)	1600.16
1600.3	Deleted.
1600.4(a)	1600.11(a)
1600.4(b)	Deleted.
1600.5	1600.12(c)
1600.6	1600.14
1600.7	1600.13
1600.8	Deleted.
1600.9	1600.21
1600.10	1600.22
1600.11	1600.23
1600.12	1600.18
1600.13	Deleted.
1600.14	Deleted.
1600.15	Deleted.
1600.16	Deleted.
1600.17	Deleted.

CROSS-REFERENCE TABLES—Continued

Old section	New section
1600.18	Deleted.
1600.1	1600.1
1600.11	1600.4
1600.12	1600.2(b), 1600.5
1600.13	1600.7
1600.14	1600.6
1600.15	1600.2(c)
1600.16	1600.2(d)
1600.17	New.
1600.18	1600.12
1600.21	1600.9
1600.22	1600.10
1600.23	1600.11
1600.31	New.
1600.32	New.
1600.33	New.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board proposes to revise 5 CFR part 1600 to read as follows:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

Subpart A—General

§ 1600.1 Definitions.

Terms used in this part have the following meanings:

Account or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Contribution election means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS.

Date of appointment means the effective date of an employee's accession by the current employing agency.

Election period means the last calendar month of a TSP open season. It is the earliest period during which a TSP contribution election can become effective.

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440e.

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3) and agency matching contributions under 5 U.S.C. 8432(c)(2).

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

FERS employee or FERS participant means any employee or TSP participant covered by FERS.

Open season means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

Separation from Government service means the cessation of employment with the Federal Government, the U.S. Postal Service, or with any other employer, from a position that is deemed to be Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan Service Office (TSPSO) means the office of the TSP record keeper which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

TSP record keeper means the entity that is engaged by the Board to perform

record keeping services for the Thrift Savings Plan. As of the date of publication of this part, the TSP record keeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Elections

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election can be made on a Form TSP–1, Thrift Savings Plan Election Form, and includes any one of the following elections:

(1) To make employee contributions;

(2) To change the amount of employee contributions; or

(3) To terminate employee contributions.

(b) *Contribution allocation.* A participant may make or change the manner in which future deposits to his or her account are allocated among the TSP's investment funds only in accordance with 5 CFR part 1601.

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee may make a contribution election as follows:

(1) *Appointments made during the period January 1 through June 30, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS during the period January 1 through June 30, 2001, may make a TSP contribution election during the May 15 through July 31, 2001, open season.

(2) *Appointments made on or after July 1, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. Each year an open season will begin on May 15 and will end on July 31; a second open season will begin on November 15 and will end on January 31 of the following year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

(c) *Election to terminate contributions.* An employee may elect to terminate employee contributions to the TSP at any time. If an employee's election to terminate contributions is received by the employing agency during an open season, the employee, if otherwise eligible, may make an election to resume contributions during the next open season. If the election to terminate contributions is received by the employing agency outside an open season, the employee may not make an election to resume contributions until the second open season beginning after the election to terminate.

(d) *Forced termination of employee contributions due to in-service hardship withdrawal restrictions under 5 CFR part 1650.* If an employee is reappointed to a position covered by FERS or CSRS following a separation from Government service and, at the time of separation, he or she had been previously ineligible to make employee contributions or receive agency matching contributions because of the restrictions on participants' ability to make contributions after having received an in-service hardship distribution, described in 5 CFR part 1650, the employee continues to be ineligible to make employee contributions or have agency matching contributions made on the employee's behalf during the six-month period described at § 1650.32.

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* (1) TSP contribution elections made pursuant to § 1600.12(a)(1) will be effective no earlier than the first full pay period in July 2001. TSP contribution elections that are received by the employing agency between May 15, 2001, and June 30, 2001, will become effective the first full pay period of the election period. TSP contribution elections that are received by the employing agency during July 2001 will become effective no later than the first full pay period after the date the employing agency receives the election.

(2) TSP contribution elections made pursuant to § 1600.12(a)(2) will become effective no later than the first full pay period after the election is received by the employing agency.

(b) *Open season elections.* TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during a portion of an open season which precedes the election period, except for an election to terminate contributions, will become effective the first full pay period of the election period. TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during the election period will become effective no later than the first full pay period after the date the employing agency receives the election.

(c) *Election to terminate contributions.* An election to terminate contributions, whenever it is made, will become effective no later than the first full pay period after the date the employing agency receives the election.

(d) *Elections resulting from transfer to FERS.* Elections made pursuant to § 1600.18 will become effective no later than the first full pay period after the date the employing agency receives the election. If the employee submits a contribution election at the same time that he or she submits the FERS transfer election, both elections will become effective the same pay period.

§ 1600.14 Method of election.

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form, Form TSP–1, or, if provided by their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper Form TSP–1 must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on Form TSP–1, if a paper form is used;

(2) Be made in accordance with the employing agency's instructions, if the submission is made electronically; and

(3) Not exceed the maximum contribution limitations described in § 1600.22.

§ 1600.15 Number of elections.

Once a contribution election made during an open season becomes effective, no further contribution elections may be made during the same open season, except an election to terminate contributions.

§ 1600.16 Belated elections.

When an employing agency determines that an employee was unable, for reasons that were beyond the employee's control (other than agency administrative error, as provided in 5 CFR part 1605), to make a contribution election within the time limits prescribed by this part, the agency may accept the employee's election within 30 calendar days after it advises the employee of its determination. The election will become effective no later than the first full pay period after the date the employing agency receives the election.

§ 1600.17 Timing of agency contributions.

(a) *Employees not previously eligible to receive agency contributions.* An

employee appointed or reappointed to a position covered by FERS who had not been previously eligible to receive agency contributions is eligible to receive agency contributions the full second election period following the effective date of the appointment. If an employee is appointed during an election period, that election period is not counted as the first election period.

(b) *Employees previously eligible to receive agency contributions.* An employee reappointed to a position covered by FERS who was previously eligible to receive agency contributions is immediately eligible to receive agency contributions.

(c) Agency matching contributions that are attributable to the employee contributions made to the account of a FERS participant must change or terminate, as applicable, when the employee's contribution election becomes effective.

§ 1600.18 Effect of transfer to FERS.

(a) If an employee appointed to a position covered by CSRS elects to transfer to FERS, the employee may make a contribution election simultaneously with the election to transfer to FERS, or within 30 calendar days after the effective date of his or her transfer.

(b) Eligibility to make employee contributions, and therefore to have agency matching contributions made on the employee's behalf, is subject to the restrictions on making employee contributions after receipt of a financial hardship in-service withdrawal described at 5 CFR part 1650.

(c) If the employee had elected to make TSP contributions while covered by CSRS, the election continues to be valid until the employee makes a new valid election.

(d) Agency automatic (1%) contributions for all employees covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin the same pay period that the transfer to FERS becomes effective.

Subpart C—Program of Contributions

§ 1600.21 Contributions in whole numbers.

Employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts.

§ 1600.22 Maximum contributions.

(a) *Percentage of basic pay.* (1) Subject to paragraphs (b) and (c) of this section, the maximum FERS employee contribution for 2001 is 11 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(2) Subject to paragraphs (b) and (c) of this section, the maximum CSRS employee contribution for 2001 is 6 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(b) *Internal Revenue Code (I.R.C.) limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions to the TSP will be restricted to the I.R.C. limit; the TSP will not accept any contribution that exceeds the I.R.C. section 402(g) limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit.

(c) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions, described in this section, and employer contributions, described in § 1600.17, made to the TSP will be restricted to the I.R.C. section 415(c) limit. No employee contribution may be made to the TSP for any year to the extent that the sum of the employee contributions and the employer contributions for that year would exceed the I.R.C. section 415(c) limit.

§ 1600.23 Required reduction of contribution rates.

(a) The employing agency will reduce the contribution of any FERS or CSRS employee who has elected a whole dollar amount but whose elected contribution for any pay period exceeds any of the applicable maximum percentages set forth in § 1600.22. The employing agency will reduce the whole dollar amount to the highest whole dollar amount that does not exceed the applicable maximum percentage.

(b) An employing agency will not contribute to a participant's TSP account any amounts in excess of the limits referred to in § 1600.22(b) or (c).

Subpart D—Transfers From Other Qualified Retirement Plans

§ 1600.31 Accounts eligible for transfer.

Effective July 1, 2001, participants may transfer funds in the following types of accounts into their existing TSP accounts. This option is not available to participants who have already made a full withdrawal of their account or who are receiving monthly payments.

(a) *Qualified retirement plan.* For the purposes of this part, a qualified retirement plan is a qualified trust, described in section 401(a) of the I.R.C. (26 U.S.C. 401(a)), which is exempt from taxation under I.R.C. section 501(a) (26 U.S.C. 501(a)), or an annuity plan, described in section 403(a) of the I.R.C. (26 U.S.C. 403(a)).

(b) *Conduit individual retirement account (conduit IRA).* For the purposes of this part, a conduit IRA is an individual retirement account, described in I.R.C. section 408(a) (26 U.S.C. 408(a)), or an individual retirement annuity, described in I.R.C. section 408(b) (26 U.S.C. 408(b)), that contains only funds transferred or rolled over from a qualified retirement plan (and earnings on those amounts).

(c) *Eligible rollover distribution.* In order to be eligible for transfer to the TSP, distributions from accounts that qualify under either paragraph (a) or (b) of this section must also be eligible rollover distributions pursuant to I.R.C. section 402(c)(4) (26 U.S.C. 402(c)).

§ 1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.

(a) *Trustee to trustee transfer.* Participants may request that the administrator of their qualified retirement plan or the custodian of their conduit IRA transfer any or all of their account directly to the TSP by completing and submitting a Form TSP–60, Request for a Rollover into the TSP, to the administrator or custodian and requesting that the transaction be completed.

(b) *Rollover by participant.* Participants who have already received a distribution from their plan or conduit IRA may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete a Form TSP–60, Request for a Rollover into the TSP.

(2) The administrator of the qualified retirement plan or the custodian of the conduit IRA must certify on the TSP transfer form the amount and date of the distribution, and that the distribution is an eligible rollover distribution in accordance with I.R.C. section 402(c)(4).

(3) The participant must submit the completed Form TSP–60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the Thrift Savings Plan for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from the retirement plan or conduit IRA. The transaction is not complete until the TSP record keeper receives the Form TSP–60, executed by both the participant and plan administrator or IRA custodian, together with the guaranteed funds for the amount to be rolled over.

§ 1600.33 Treatment accorded transferred funds.

(a) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be treated as employee contributions.

(b) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be invested in accordance with the participant's contribution allocation on file at the time the transfer is completed.

(c) Funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 are not subject to the limits on contributions described in § 1600.22.

[FR Doc. 01–7232 Filed 3–23–01; 8:45 am]
BILLING CODE 6760–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to revise the regulations on participants' choices of investment funds. This proposed rule implements a provision of the Thrift Savings Plan Act of 1996 which added two new investment funds to the Thrift Savings Plan (TSP). It also implements a decision by the Board to transfer the processing of contribution allocations from the employing agencies to the TSP record keeper.

DATES: Comments must be received on or before April 25, 2001.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On July 17, 1995, and September 14, 1995, the Board published in the **Federal Register** (60 FR 47836 and 60 FR 36630) final rules concerning participants' choices of investment funds. This proposed rule amends those rules.

The Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, authorized the creation of two new investment funds for the TSP. The new funds are the Small Capitalization Stock Index Fund (S Fund) and the International Stock Index Investment Fund (I Fund). The S Fund will comprise a portfolio designed to track the performance of an index of common stocks the aggregate market value of which represents the United States equity markets, excluding the common stocks held in the Common Stock Index Investment Fund (C Fund). The I Fund will comprise a portfolio designed to track the performance of common stocks the aggregate market value of which is a reasonably complete representation of the international equity markets, excluding the Unites States equity market. In addition to these new funds, participants will continue to have the option to invest in the Government Securities Investment Fund (G Fund), the Fixed Income Investment Fund (F Fund), and the Common Stock Index Investment Fund (C Fund). Effective May 1, 2001, the Board will modify its current record keeping system to incorporate these new funds and will also change the way contribution allocations are processed.

Analysis

The proposed rule eliminates §§ 1601.2(a), (c) and (d), 1601.4(b), and 1601.6 because those sections are obsolete. Sections 1601.3 and 1601.7 have been redesignated as § 1602.36; effective May 1, 2001, error correction will be processed in accordance with part 1605.

Proposed subpart A contains definitions relevant to participants' choices of investment funds, as it does currently. The definitions of allocation election, election form, and election period in the existing regulation are deleted as unnecessary. Other definitions, such as Board and CSRS, are deleted because they are not specifically applicable to participants' choices of investment funds.

In subpart B of the proposed regulation, the Board explains a new process for making a contribution allocation. Contribution allocations apply to future TSP contributions and loan payments. Currently, participants make a contribution election and a contribution allocation at the same time, on Form TSP–1; this form is submitted to the participant's employing agency. Participants will continue to use Form TSP–1 to make contribution elections and will submit that form to their employing agency. However, on May 1, 2001, when the new funds are implemented, contribution allocations will be submitted to the TSP record keeper following the procedures described in proposed Subpart B.

Subpart B includes a transition rule that explains how new contributions will initially be invested upon implementation of the new funds. This transition rule will apply to contributions and loan payments posted after April 30, 2001. In particular, § 1601.12 provides that beginning on May 1, 2001, contributions and loan payments for each TSP account will be invested based on the allocation of the most recent contribution posted to a participant's account between March 15 and April 30, 2001. If there was none, contributions and loan payments will be invested based upon any interfund transfer request pending for April 30, 2001. If there is no interfund transfer request pending for April 30, 2001, contributions and loan payments will be allocated based upon the participant's March 31, 2001 month-end account balance. If a participant's March month-end account balance is zero, his or her contributions and loan payments will be invested in the G Fund. This derived allocation will continue until a valid contribution allocation is received and processed.

For accounts first established on or after May 1, 2001, contributions and other deposits received will be invested in the G Fund until the participant makes a different contribution allocation. The participant may subsequently make a contribution allocation to change the investment of future contributions or an interfund transfer to change the investment of his or her existing account balance at any time after he or she is notified by the TSP record keeper that the account has been established. Effective May 1, 2001, all TSP participants may elect to invest all or part of their new contributions and loan payments in any of the five investment funds.

Proposed § 1601.13 explains that, effective May 1, 2001, a participant may make a contribution allocation by using the TSP Web site, the ThriftLine, or by completing a Form TSP–50, Investment Allocation. Section 1601.13 explains the requirements for a valid contribution allocation, largely incorporating existing § 1601.2(b). It also explains that participants will be able to make contribution allocations in increments of one percent instead of the current five percent.

Subpart C describes the rules that a participant must follow in order to make an interfund transfer of his or her existing TSP account balance. Section 1601.22 of the proposed regulation essentially incorporates § 1601.5 of the existing regulations and also provides that, effective May 1, 2001, a participant may use the TSP Web site, the ThriftLine, or a Form TSP–50 to request an interfund transfer.

Subpart D has been added to part 1601 to consolidate rules that apply to participants' choices of investment funds for new contributions (contribution allocations) and to redistributing existing account balances (interfund transfers). For example, § 1602.32 describes the timing and posting dates for contribution allocations and interfund transfer requests. Section 1602.33 provides that a participant who elects to make an interfund transfer to the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk (that the investment is made at the participant's risk and the participant understands that the TSP does not guarantee investment returns or guarantee against a loss in the value of the investment). Section 1602.34 prescribes the rules for giving effect to a Form TSP–50.

CROSS-REFERENCE TABLES

Old section	New section
1601.1	1601.1
1601.2(a), (c), (d)	Deleted.
1601.2(b)	1601.13
1601.3	1601.36
1601.4(a)	1601.21
1601.4(b)	Deleted.
1601.5	1601.22
1601.6	1601.32
1601.7	1601.36

New section	Old section
1601.1	1601.1
1601.11	New.
1601.12	New.
1601.13	1601.2(b)
1601.21	New.
1601.22	1601.5
1601.31	New.
1601.32	1601.6
1601.33	New
1601.34	New.
1601.35	New.
1601.36	1601.3, 1601.7.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1601

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board proposes to revise 5 CFR part 1601 to read as follows:

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

Subpart A—General

Subpart B—Investing Future Contributions and Loan Payments

Subpart C—Redistributing Participants' Existing Account Balances

Subpart D—Contribution Allocations and Interfund Transfer Requests

Authority: 5 U.S.C. 8351, 8438, 7474(b)(5) and (c)(1).

Subpart A—General

§ 1601.1 Definitions.

As used in this part:

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account.

Acknowledgment of risk means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Day means calendar day, unless otherwise stated.

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

I Fund means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

Interfund transfer means the reapportionment, under this part, of a participant's existing account balance among the various TSP investment funds.

Investment fund means any investment fund authorized under 5 U.S.C. 8438.

S Fund means the Small Capitalization Stock Index Fund established under 5 U.S.C. 8438(b)(1)(D).

Source of contributions means employee contributions, agency automatic (1%) contributions, or agency matching contributions.

ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (504) 255–8777.

TSP record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. As of the date of publication of this part, the TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

TSP Web site means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is http://www.tsp.gov.

Subpart B—Investing Future Contributions and Loan Payments

§ 1601.11 Applicability.

This subpart applies only to the investment of future contributions and loan payments in the TSP's investment funds; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

§ 1601.12 Investing future contributions and loan payments in the TSP investment funds.

(a) *Transition rule.* Effective May 1, 2001, contributions and loan payments will be allocated among the investment funds based on the allocation of the most recent contribution posted to the account between March 15, 2001, and April 30, 2001. If no contributions have been posted to an account between March 15, 2001, and April 30, 2001, the allocation will be based on the allocation shown on an interfund transfer request pending for April 30, 2001. If there is no interfund transfer pending for April 30, 2001, the allocation will be based on the allocation of the account as of the March 31, 2001, account balance. If the March 31, 2001, account balance is zero, the contributions and loan payments will be allocated 100% to the G Fund. The allocation derived under this section will be applied to all contributions and loan payments posted as of a date after April 30, 2001, until a new contribution allocation is made by the participant pursuant to § 1600.12.

(b) *Investment fund availability.* Effective May 1, 2001, all participants may elect to invest all or any portion of their future contributions and loan payments in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Effective May 1, 2001, each participant may indicate his or her choice of investment funds for the allocation of future contributions and loan payments by using the TSP Web site or the ThriftLine, or completing Form TSP–50, Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentage elected by a participant for investment of future contributions in an investment fund will be applied to all sources of contributions and loan payments. A participant may not make different percentage elections for different sources of contributions or for loan payments;

(3) A participant who elects for the first time to invest contributions and loan payments in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33;

(4) All contributions and loan payments made on behalf of a participant who does not have a contribution allocation in effect will be invested in the G Fund;

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired, his or her last contribution allocation before separation from service will be given effect until a new allocation is made.

(b) *Effect of rejection of form.* If a Form TSP–50 is rejected, the purported contribution allocation made on the form will have no effect. The TSP will provide the participant with a written statement of the reason the form was rejected.

(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

Subpart C—Redistributing Participants' Existing Account Balances

§ 1601.21 Applicability.

This subpart applies only to redistributing participants' existing account balances among the TSP's investment funds; it does not apply to the investment of future contributions and loan payments, which is covered in subpart B of this part.

§ 1601.22 Methods of requesting an interfund transfer.

(a) Effective May 1, 2001, participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP–50, Investment Allocation. The following rules apply to an interfund transfer request:

(1) Interfund transfer requests must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentages elected by the participant will be applied to the balances from each source of contributions that make up the participant's total account balance on the effective date of the interfund transfer;

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund, or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33.

(b) An interfund transfer request has no effect on contributions and loan payments made after the effective date of the interfund transfer request; subsequent contributions and loan payments will continue to be allocated among the investment funds in accordance with the participant's contribution allocation made under subpart B of this part.

Subpart D—Contribution Allocations and Interfund Transfer Requests

§ 1601.31 Applicability.

This subpart applies both to contribution allocations made under subpart B of this part and interfund transfers made under subpart C of this part.

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation will ordinarily be posted within 2 business days after it is received.

(2) An interfund transfer request received by midnight (central time) on the 15th of the month will be posted to a participant's account as of the last day of the month. (If the 15th of the months falls on a weekend, holiday, or other nonbusiness day, the deadline will be the next business day.) Requests received after the deadline will be posted to a participant's account as of the last day of the following month.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant; however, only one interfund transfer will be processed per month.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests with different dates are received for a participant and would be posted on the same day under the rules set forth in paragraph (a) of this section, only the last contribution allocation or interfund transfer request with the latest date will be posted.

(2) If two or more contribution allocations or two or more interfund transfer requests with the same date are received for a participant and would be posted on the same day, the following rules will apply:

(i) If one or more of the contribution allocations or interfund transfer requests are submitted through the TSP Web site or the ThriftLine and one or more are made on a Form TSP–50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine will be posted;

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted; and

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP–50, all of the forms will be rejected unless the percentage allocations among the investment funds are identical, in which case one will be accepted.

(3) For purposes of determining the date and time of a contribution allocation or an interfund transfer request, the following rules apply:

(i) The date of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine, is the date the participant enters the investment percentages;

(ii) The date of a contribution allocation or interfund transfer request made on Form TSP–50 is the date the form is signed by the participant; and

(iii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.* (1) A contribution allocation or an interfund transfer request may be canceled only through the TSP Web site, the ThriftLine, or through written correspondence.

(2) *Cancellation on the TSP Web site or ThriftLine.* A contribution allocation or an interfund transfer request may be canceled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, that is applicable to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. The second request will then be processed in turn.

(3) *Cancellation by correspondence.* A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP record keeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation must be received by the deadline described in paragraph (a) of this section. Unless the letter states unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any contribution allocation or interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of a contribution allocation or an interfund transfer request and the request was made on Form TSP–50, the form will be canceled. If the request was made on the TSP Web site or ThriftLine, it will only be canceled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be canceled.

§ 1601.33 Acknowledgment of risk.

(a) A participant who wants to invest in any investment fund other than the G Fund must execute an acknowledgment of risk for that fund. If a required acknowledgment of risk has not been executed, no transactions involving the fund(s) for which the acknowledgment is required will be accepted.

(b) The acknowledgment of risk may be executed in association with a contribution allocation or an interfund transfer using the TSP Web site, the ThriftLine, or Form TSP–50.

§ 1601.34 Effectiveness of Form TSP–50.

(a) A Form TSP–50 will not be effective if:

(1) It is not signed and dated;

(2) It is missing a Social Security number or date of birth;

(3) The contribution allocation or interfund transfer percentages do not total 100%; or

(4) The form is otherwise not properly completed in accordance with the instructions on the form.

(b) If a Form TSP–50 is rejected, the TSP will provide the participant with a written statement of the reason the form was rejected.

§ 1601.35 Posting of transaction requests.

The Board fully expects to meet the standards of § 1602.32. However, the Board cannot and does not guarantee that the TSP Web site or the ThriftLine will always be available to accept and process transaction requests.

§ 1601.36 Error correction.

Errors in processing contribution allocations and interfund transfer requests, or errors that otherwise cause money to be invested in the wrong investment fund, will be corrected in accordance with the error correction regulations found at 5 CFR part 1605.

[FR Doc. 01–7233 Filed 3–23–01; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 35, 35R, A35, and B35 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–13–02, which currently requires

operating limitations on Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, and B35 airplanes. This proposed AD is the result of Raytheon developing inspection and modification procedures that, when accomplished on the affected airplanes, would eliminate the need for the operating limitations. This proposed AD would retain the operating limitations for the affected airplanes until the recently developed inspection and modification procedures are accomplished. The proposed AD would also require repetitive inspections of the fuselage structure. The actions specified by the proposed AD are intended to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 25, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–44–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action on the Raytheon airplane ruddervator system to this point? AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires the following on Raytheon Beech Models 35, A35, B35, and 35R airplanes:

—Fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and installing this placard on the instrument panel within the pilot's clear view;
—Marking a red line on the airspeed indicator glass at 144 MPH (125 KTS);
—Marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case; and
—Inserting a copy of this AD into the Limitations Section of the POH/AFM.

In addition, AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), requires the following on certain Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes, as well as the Beech Models 35, A35, B35, and 35R airplanes:

—Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;
—Repetitively inspecting the fuselage bulkheads for damage, and replacing any damaged parts;
—Installing stabilizer reinforcements for some airplane models, as applicable;
—Fabricating and installing airspeed limitation placards;
—Incorporating certain airspeed limitations into the airplane flight manual/pilot's operating handbook (POH/AFM);
—Inspecting the empennage, aft fuselage, and ruddervator control system for damage, and replacing or repairing any damaged parts; and
—Ensuring the accuracy of the airplane basic weight and balance information, and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

What has happened since AD 94–20–04 and AD 98–13–02 to initiate this action? AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections would eliminate the need for the operating limitations of AD 98–13–02. This service bulletin also includes the procedures necessary for continuing the repetitive inspections of the empennage, aft fuselage, and ruddervator control system (the inspections AD 94–20–04 currently require).

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

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

—The unsafe condition referenced in this document still exists or could develop on other Raytheon Beech Models 35, A35, B35, and 35R airplanes of the same type design;

—The inspections specified in Raytheon Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, should be accomplished on Beech Models 35, 35R, A35, and B35 airplanes;

—The repetitive inspections currently required on these airplanes by AD 94–20–04 should be removed from AD 94–20–04 and included in this proposed AD. These repetitive inspections should be accomplished in accordance with Raytheon Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000; and

—AD action should be taken in order to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

What would the proposed AD require? This proposed AD would supersede AD 98–13–02 with a new AD. The proposed AD would require you to inspect the aft fuselage, ruddervator, and related systems for acceptable condition on Beech Models 35, 35R, A35, and B35 airplanes; adjust ruddervator balance to the new limits; and repair or replace damaged parts, as necessary. This proposed inspection requirement along with the new proposed limits for the ruddervator balance (set forth in Raytheon SB 27–3358, Section 3.A) would terminate the need for the operating limitations for those airplanes.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 2,211 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
55 workhours at $60 per hour = $3,300	$500 per airplane	$3,800	$8,401,800

The above figures are based only on the proposed initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that would be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes would incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777): Docket No. 2000–CE–44–AD; Supersedes AD 98–13–02, Amendment 39–10590.

(a) *What airplanes are affected by this AD?* This AD affects Beech Models 35, 35R, A35, and B35 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Fabricate a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and install this placard on the instrument panel within the pilot's clear view. The placard should utilize letters of at least 0.10-inch in height and contain the following words: "Never exceed speed, Vne, 144 MPH (125 KTS) IAS".	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.

Actions	Compliance	Procedures
(2) Mark a red line on the airspeed indicator glass at 144 MPH (125 KTS) and mark a white slippage mark on the outside surface of the airspeed indicator between the glass and case.	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.
(3) Insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.
(4) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard as required by paragraph (d)(1) of this AD and insert this AD into the Limitations Section of the AFM as required by paragraph (d)(3) of this AD.	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(5) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage. Repair or replace any damaged parts and set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect within the next 100 hours TIS after the last inspection required by AD 94–20–04 or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS. Accomplish any repairs, replacements, and adjustments prior to further flight after the applicable inspection.	Accomplish the inspection and repairs or replacements in accordance with paragraphs (5)(a) through (5)(f) of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000.
(6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after the effective date of this AD, unless already accomplished as previously required by AD 94–20–04. Correct any discrepancies prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.
(7) Inspect the aft fuselage, ruddervator, and related systems for acceptable condition.	Accomplish the inspections within the next 2 years after the effective date of this AD, unless already accomplished. Accomplish any repair or replacement prior to further flight after the inspection. Accomplish any ruddervator rebalancing prior to further flight after the inspection and when the ruddervators are repaired or repainted (even if stripes are added or paint is touched up).	Accomplish the inspection and repairs or replacements in accordance with all paragraphs in the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000. Accomplish the rebalancing in accordance with Section 3A(8) of the service bulletin and use the procedure in Section 3 of Beech Shop Manual 35–590096B19 (or subsequent revision).
(i) Repair or replace any parts found unacceptable as specified in the service bulletin; (ii) Rebalance the ruddervators to the new specifications that reduce the upper limit from 19.8 to 18 inch-pounds (tail heavy); and (iii) Discontinue the placard and operating limitations required by paragraphs (d)(1) through (d)(4) of this AD.		

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

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

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

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–13–02, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal

Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201-0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–02, Amendment 39–10590.

Appendix to Docket No. 2000–CE–44–AD

Weight and Balance Accuracy Method No. 1:

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

3. If equipment additions or deletions are not reflected in the documentation or if modification affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2:

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on March 19, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–7335 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 94–20–04, which currently requires ruddervator inspections, modifications, and operating limitations on certain Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This proposed AD is the result of information received from the field on the ability to accomplish and understand this existing AD. The proposed AD would condense and clarify the information presented in AD 94–20–04 and would remove the Beech Models 35, 35R, A35, and B35 airplanes from the applicability of AD 94–20–04. We are incorporating the actions applicable to the Beech Models 35, 35R, A35, and B35 airplanes into another proposed AD action. The actions specified by the proposed AD are intended to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 25, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 93–CE–37–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action on the Raytheon airplane ruddervator system to this point? The following paragraphs

describe AD's that FAA issued to address the V-tail structure on Raytheon Beech 35 series airplanes.

AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), currently requires the following on certain Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes:

—Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;
—Repetitively inspecting the fuselage bulkheads for damage, and replacing any damaged parts;
—Installing stabilizer reinforcements for some airplane models, as applicable;
—Fabricating and installing airspeed limitation placards;
—Incorporating certain airspeed limitations into the airplane flight manual/pilot's operating handbook (POH/AFM);
—Inspecting the empennage, aft fuselage, and ruddervator control system for damage, and replacing or repairing any damaged parts; and
—Ensuring the accuracy of the airplane basic weight and balance information, and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin (SB) No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires operating limitations in order to address ruddervator problems on Beech Models 35, A35, B35, and 35R airplanes.

What has happened since AD 94–20–04 and AD 98–13–02 to initiate this action? AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections would eliminate the need for the operating limitations of AD 98–13–02.

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

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

—The unsafe condition referenced in this document still exists or could develop on other Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B of the same type design;
—The actions of AD 94–20–04 should be condensed and clarified;
—The Beech Models 35, A35, B35, and 35R airplanes should be removed from the applicability of AD 94–20–04 and the actions of that AD for these airplanes should be combined with AD 98–13–02; and
—AD action should be taken in order to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

What would the proposed AD require? This proposed AD would revise AD 94–20–04, would condense and clarify the information presented in this AD, and would remove the Beech Models 35, 35R, A35, B35 airplanes from the Applicability of AD 94–20–04. We are proposing to incorporate the actions applicable to the Beech Models 35, 35R, A35, and B35 airplanes into another proposed AD action.

The operating limitations from AD 94–20–04 for the Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes are not included in this proposed AD because the other actions retained from AD 94–20–04 make them unnecessary.

The repetititive inspections currently required by AD 94–20–04 for Beech Models 35, 35R, A35, and B35 airplanes will be incorporated into another proposed AD action, and will be accomplished in accordance with Raytheon Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 10,200 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed initial inspections. These cost figures are exactly the same as what is currently required by AD 94–20–04. This proposed AD presents no new costs upon the public:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours at $60 per hour=$2,400	Not applicable	$2,400 per airplane	$24,480,000

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that would be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes would incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15): Docket No. 93–CE–37–AD; Revises AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35. N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

Note 1: Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04. We have removed the Beech Models 35, 35R, A35, and B35 airplanes from the Applicability Section of this AD and incorporated the actions applicable to these airplanes into another AD action.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Verify that the ruddervator balance is within the manufacturer's specified limits as defined in the applicable shop or maintenance manual and balance the ruddervator control surfaces, as necessary.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AED 94–20–04), and thereafter prior to further flight after the ruddervators are repaired or repainted (even if stripes are added or paint is touched up).	Verify in accordance with the applicable shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions.
(2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage. Repair or replace any damaged parts and set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), and thereafter at intervals not to exceed 100 hours TIS. Accomplish any repairs, replacements, and adjustments prior to further flight after the applicable inspection.	In accordance with the procedures and as specified in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage and Aft Fuselage Inspection", as specified in Beech Service Bulletin No. 2188, dated May, 1987.
(3) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable. (i) Seal or fill any residual holes with appropriate size rivets. (ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained. (iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(4)(i) of this AD. (iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(4)(i) of this AD.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the applicable maintenance information.

Actions	Compliance	Procedures
(4) Accomplish the following: (i) Install stabilizer reinforcements; (ii) Set the elevator nosedown trim; and (iii) Replace the ruddervator tab control cables with larger diameter cables.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the instructions to RAC Kit No. 35–04016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987.
(5) Verify the accuracy of the airplane basis weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. Correct any discrepancies prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.

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

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

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

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04, which is revised by this AD, are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04, Amendment 39–9032.

Appendix to Docket No. 93–CE–37–AD

Weight and Balance Accuracy Method No. 1:

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

3. If equipment additions or deletions are not reflected in the documentation or if modification affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2:

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on March 19, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–7334 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 275, 290 and 296

[Notice No. 913]

RIN: 1512–AC35

Implementation of Public Laws 106–476 and 106–554, Relating to Tobacco Importation Restrictions, Markings, Repackaging, and Destruction of Forfeited Tobacco Products (2000R–492P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations governing tobacco products in order to implement several provisions of the Imported Cigarette Compliance Act of 2000 included as part of the Tariff Suspension and Trade Act of 2000. Sections 4002 and 4003 of this new law require that tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation can only be re-imported by the original manufacturer or by an export warehouse authorized to do so by the original manufacturer, provide that those articles labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label, and require the destruction of tobacco products forfeited under § 5761(c).

This notice also proposes regulations that will implement section 315 of the Consolidated Appropriations Act, 2001 which allows travelers to bring personal-use quantities of tobacco

products into the United States (up to the quantity allowed entry free of tax and duty under the Harmonized Tariff Schedule of the United States). Travelers may voluntarily relinquish to the U.S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under § 5761(c).

This notice proposes to implement these changes in the law by providing new and amended regulations in parts 275, 290 and 296 of title 27 of the Code of Federal Regulations (CFR). Note that the effective date of the above provisions of the Imported Cigarette Compliance Act of 2000 is February 7, 2001. Section 315 of the Consolidated Appropriations Act, 2001 is retroactive to the effective date of the Balanced Budget Act of 1997, January 1, 2000.

Several other provisions of the Imported Cigarette Compliance Act of 2000 amend the Tariff Act of 1930 by imposing additional requirements for the entry of cigarettes into the United States. Those provisions of the new law will be implemented through regulations issued by the U.S. Customs Service.

DATES: Written comments must be received by May 25, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 913.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1999, the Bureau of Alcohol, Tobacco and Firearms published a temporary rule, T.D. ATF–421, in the **Federal Register** (64 FR 71918, Dec. 22, 1999). This temporary rule implemented several provisions found in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105–33, 111 Stat. 672. Section 9302 of the Act had amended the Internal Revenue Code of 1986 at sections 5704(b), 5712, 5754 and 5761(c). These amendments: placed restrictions on the importation of previously exported tobacco products, required markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provided penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorized the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit. These new provisions of law became effective January 1, 2000.

The temporary rule, T.D. ATF–421, implemented these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Concurrently with the temporary rule, ATF also published a notice of proposed rulemaking, Notice No. 887 (64 FR 71927, Dec. 22, 1999), that solicited comments regarding the temporary regulations. The original comment period for Notice No. 887 lasted for 60 days and closed on February 22, 2000.

During the comment period, the ATF received requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice. ATF found that a reopening of the comment period was warranted and on March 21, 2000, ATF published Notice No. 893 in the **Federal Register**. This notice reopened the comment period for Notice No. 887 for an additional 30 days. The second comment period for Notice No. 887 closed on April 20, 2000.

On April 18, 2000 the United States District Court for the District of Columbia in the civil action, *World Duty Free Americas, Inc.* v. *Treasury*, (D.D.C. No. 00–00404 (RCL)), issued a temporary injunction enjoining the Treasury Department from enforcing Temporary Rules 27 CFR 275.11 and 27 CFR 275.83, in T.D. ATF–421, to the extent that they prohibited the importation of cigarettes purchased in U.S. duty free stores up to the limit allowed by the personal use exemption provided by 19 U.S.C. 1555 and the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202, subheadings 9804.00.65, 9804.00.70 and 9804.00.72.

Later, on November 9, 2000, the President signed the Tariff Suspension and Trade Act of 2000, Public Law 106–476, 114 Stat. 2101, that included the Imported Cigarette Compliance Act of 2000 (ICCA 2000). Several sections of the IRC that were amended by Balanced Budget Act of 1997 have been further amended by the ICCA 2000, including sections 5704(d), 5754 and 5761(c). These new amendments require that tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation can only be re-imported by the original manufacturer, or by an export warehouse authorized to do so by the original manufacturer, provide that those articles labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label, and require the destruction of tobacco products forfeited under § 5761(c).

In addition, the Consolidated Appropriations Act, 2001, signed December 21, 2000, Public Law 106–554, 114 Stat. 2763, amended the IRC at section 5761(c) by adding language to the law which provides that travelers can bring personal-use quantities of U.S. manufactured tobacco products labeled for export into the United States (up to the quantity allowed entry free of tax and duty under the Harmonized Tariff Schedule of the United States). Further, the law provides that a person may voluntarily relinquish any excess quantity of tobacco products without incurring the penalty. However, no quantity of tobacco products other than the amount permitted under chapter 98 of the Harmonized Tariff Schedule of the United States may be relanded or received as a personal use quantity.

ATF believes that the above-described changes in the law are clear and leave no discretion in implementation. However, because of the pending litigation *(World Duty Free Americas, Inc.* v. *Treasury)*, ATF has decided to issue this notice of proposed rulemaking prior to the issuance of a final rule.

Accordingly, this notice of proposed rulemaking seeks public comment on the proposed amendments to the regulations in parts 275, 290, and 295 of title 27 of the Code of Federal Regulations (CFR).

The following is a discussion of those sections of the IRC that were amended by the Balanced Budget Act of 1997 and further amended by the ICCA 2000 and the Consolidated Appropriations Act, 2001.

Importation Restrictions

Balanced Budget Act. Section 9302 of the Balanced Budget Act of 1997 added a new section, 26 U.S.C. 5754, to the IRC entitled, "Restriction on importation of previously exported tobacco products." This new section became effective on January 1, 2000 and it placed severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. Section 5754 stated that such products

may only be imported or brought into the United States as provided in section 5704(d). The referenced section, 5704(d), allowed previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes could be imported or brought into the United States was by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. However, section 5704(d) allowed previously exported tobacco products to be transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law did not mandate that the previously exported products return to the original manufacturer or export warehouse proprietor as authorized by the original manufacturer.

Imported Cigarette Compliance Act of 2000. Section 4002 of the Imported Cigarette Compliance Act of 2000 further amends sections 5754 and 5704(d) of the IRC whereby tobacco products and cigarette papers and tubes manufactured in the United States and previously exported may be imported or brought into the United States, if such articles are released from Customs custody with the partial duty exemption provided in section 5704(d), or are returned to the original manufacturer of such articles as provided in section 5704(c). Further, section 5704(d) of the IRC was amended by deleting a reference to "a manufacturer of" and inserting "the original manufacturer of" tobacco products or cigarette papers and tubes. The term "proprietor of an export warehouse" was also amended by inserting the phrase "authorized by such manufacturer to receive such articles" after the term "proprietor of an export warehouse." Therefore, the amended language of the law in 5704(d) now refers to "proprietor of an export warehouse authorized by such manufacturer to receive such articles."

Thus, with these amendments to sections 5754 and 5704(d), previously exported tobacco products and cigarette papers and tubes of United States manufacture may be imported or brought into the United States by: (1) Release from Customs custody under 5704(d) to "the original manufacturer" or to "the proprietor of an export warehouse authorized by such manufacturer to receive such articles" or, (2) return to the original manufacturer of such articles as provided in 5704(c).

Proposed Amendments to the Regulations. This NPRM proposes to amend the regulations at 27 CFR 275.82 to reflect the above described changes in the law.

Tobacco Products Labeled for Export

Balanced Budget Act. As discussed above, section 9302 of the Balanced Budget Act of 1997 amended the IRC by adding section 5754 which imposed restrictions on the importation of previously exported tobacco products. Thus, only articles which had been exported from the United States were subject to the re-importation restriction. It also amended section 5704(b) by providing that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. § 5704(b) unless they bear the proper marks, labels and notices.

Imported Cigarette Compliance Act of 2000. Section 4002 of the Imported Cigarette Compliance Act of 2000 further amends the IRC by providing new language at section 5754 whereby tobacco products and cigarette papers and tubes manufactured in the United States and "labeled for exportation" are subject to the restrictions and penalties applicable to this section. Thus, the new language at section 5754 makes the law applicable to both exported articles and articles labeled for export, but not exported. The Committee report that accompanied the bill states: "The provision expands the application of the special tax penalty for re-importing tobacco products to include the sale in the U.S. domestic market of tobacco products labeled for export (but not actually exported). Thus, this penalty can be imposed in addition to the present-law penalties and other sanctions that apply to tobacco products that might be removed for export, but instead are diverted into the U.S. domestic market." S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Amendments to the Regulations. This NPRM proposes to amend the regulations at 27 CFR 275.82 to reflect the above described change in the law. The penalty provisions in 27 CFR 275.83(a), which implement verbatim section 5761(c), already applied to articles "labeled or shipped for exportation." Therefore, since articles labeled for exportation are already addressed in section 275.83, it is not necessary to amend it.

Returned Articles in the U.S. Market

Balanced Budget Act. Section 9302 of the Balanced Budget Act of 1997 imposed a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. However, section 9302(i) of this Act also provided that the amendments to the IRC under the Balanced Budget Act of 1997 only applied to "articles removed" after December 31, 1999. As a consequence, articles that were removed on or before December 31, 1999 were not subject to the new penalty. Thus, relanded tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 were lawful products and not subject to the civil penalty, or other criminal provisions of Chapter 52 of the IRC.

Imported Cigarette Compliance Act of 2000. Section 4002 of the Imported Cigarette Compliance Act 2000 amends the IRC by providing new language at section 5754(a)(1)(C) whereby tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. Further, the provisions of section 4002 take effect 90 days after enactment of the Act and, therefore, are effective on February 7, 2001. See section 4002(d) of the ICCA 2000 for the effective date.

The consequence of this amendment is that whereas the Balanced Budget Act of 1997 had allowed previously exported articles that were imported before January 1, 2000 to be legally sold on the domestic market, the ICCA 2000 makes the sale or holding for sale of such articles illegal effective February 7, 2001, unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.

The Committee report that accompanied the bill, states: "The provision also authorizes the Treasury Department to seize all export-labeled tobacco products found in the U.S. domestic market regardless of the date of removal." S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Further, amended section 5754(a)(2) also provides that the restrictions on export-labeled articles also apply to articles that have been altered by a person other than the original manufacturer. Thus, if a person places

stickers over the export label, or otherwise attempts to conceal or remove the export label on the packaging, the restrictions in 26 U.S.C. 5754 still apply to that article.

Amendments to the Regulations. This NPRM proposes to amend the regulations at 27 CFR 275.82 and 296.166(b) and (c) to reflect these changes in the law.

Disposition of Forfeited Tobacco Products

Balanced Budget Act. Section 9302 of the Balanced Budget Act of 1997 amended the IRC by adding a new civil penalty at 26 U.S.C. 5761(c). The penalty applies to persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product could be imposed. However, section 5761(c) did not specify how the Department of the Treasury should dispose of forfeited tobacco products.

Imported Cigarette Compliance Act of 2000. Section 4002(c) of the Imported Cigarette Compliance Act of 2000 amends section 5761(c) of the IRC by adding language which requires that all relanded tobacco products and cigarette papers and tubes shall be forfeited to the United States and destroyed. The Committee report that accompanied the bill states, "The provision also provides that tobacco products that are forfeited to the Federal Government under present-law provisions must be destroyed (rather than being disposed of in any manner administratively determined by the Treasury Department)." S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Amendments to the Regulations. This NPRM proposes to amend the regulations at 275.83(c) by providing that forfeited tobacco products and cigarette papers and tubes will be destroyed.

Travelers Entering the United States

Balanced Budget Act. As discussed earlier, the Balanced Budget Act of 1997 amended the IRC by adding two new sections of law aimed at restricting the importation of previously exported tobacco products. 26 U.S.C. 5754 provided that only manufacturers of tobacco products and export warehouses may import previously exported tobacco products. In addition, section 5761(c) provided penalties for selling, receiving, and relanding of tobacco products labeled or shipped for export. Neither section of law provided an exemption for travelers entering the United States with small quantities of tobacco products for personal use.

This application of the law was challenged by several operators of duty free stores and in a civil action, *World Duty Free Americas, Inc.* v. *Treasury.* The court in *World Duty Free* issued a temporary injunction enjoining the Treasury Department from enforcing Temporary Rules 27 CFR 275.11 and 275.83 to the extent that they prohibited the importation of cigarettes purchased in U.S. duty free stores up to the limit allowed by the personal use exemption provided by 19 U.S.C. 1555 and the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202, subheadings 9804.00.65, 9804.00.70 and 9804.00.72.

ICCA 2000 and Consolidated Appropriations Act, 2001. As discussed earlier, on November 9, 2000 the President signed the Imported Cigarette Compliance Act of 2000. Section 4003 of the Imported Cigarette Compliance Act of 2000 amended the IRC at section 5761(c) by inserting the following language: "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Shortly thereafter, on December 21, 2000, the President also signed the Consolidated Appropriations Act, 2001. Section 315 of the Consolidated Appropriations Act, 2001 further amended section 5761(c) in the IRC by substituting the following language: "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Under this revised language in the law, travelers entering the United States, if they claim and are granted a personal use exemption, are allowed to bring U.S. manufactured tobacco products labeled for export back into the United States up to the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States. In addition, a traveler claiming such a personal use exemption upon arrival at the border may voluntarily relinquish to the U.S. Customs Service any excess of such quantity without incurring a penalty under this section. Only the numerical quantity allowable under the Harmonized Tariff Schedule of the United States free of tax and duty may be considered as a personal use quantity.

In addition, section 315 of the Consolidated Appropriations Act, 2001 made the above described allowance for travelers retroactive to January 1, 2000, when the original restrictions and penalties imposed by the Balanced Budget Act of 1997 took effect.

Amendments to the Regulations. In accordance with the above described amendments to the IRC, ATF proposes to amend the regulations at 27 CFR 275.82 and 275.83 to provide that personal use quantities allowed under the law are exempt from the restrictions and penalties applicable to reimported tobacco products. The definition of "relanding" at 27 CFR 275.11 is amended to delete the second sentence relating to the relinquishment of tobacco products by travelers, which is now delineated in the proposed revisions to 27 CFR 275.82 and 275.83.

Miscellaneous Amendments

In addition to amendments described above, ATF proposes to amend the authority cite that appears after 27 CFR 290.185, Label or Notice, to include a reference to 26 U.S.C. 5704(b), which allows the Secretary to prescribe appropriate marks, labels or notices.

Amendments to the Tariff Act of 1930

The Imported Cigarette Compliance Act of 2000 also amends the Tariff Act of 1930 by imposing additional requirements for the entry of cigarettes into the United States. Those provisions of the new law will be implemented through regulations issued by the U.S. Customs Service.

Public Participation

Who May Comment on This Notice?

ATF requests comments on this notice of proposed rulemaking from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration

cannot be given except as to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Can I Review Comments Received?

Yes. You may view and copy written comments on this notice during normal business hours in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226, telephone (202) 927–8480.

How Do I Send Facsimile Comments?

Comments may be submitted by facsimile transmission to (202) 927–8525. Facsimile comments must:

- be legible;
- be 8½" x 11" in size;
- contain a legible written signature;
- be not more than three pages.

We will not acknowledge receipt of FAX transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (e-mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- contain your name, mailing address, and e-mail address;
- reference this notice number;
- be legible when printed on not more than three pages 8½1/2" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and comment form through the address *http://www.atf.treas.gov/core/tobacco/rules/rules.htm*.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Regulatory Analyses and Notices

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

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

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

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

This notice of proposed rulemaking does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice.

Drafting Information

The principal author of this document is Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

List of Subjects

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Exports, Packaging and containers, Penalties, Surety bonds, Tobacco products.

Authority and Issuance

Accordingly, we propose to amend title 27, Code of Federal Regulations as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 275 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.11 [AMENDED]

Par. 2. In § 275.11, the definition for "Relanding" is amended by removing the second sentence.

Par. 3. Section 275.82 is revised to read as follows:

§ 275.82 Restrictions on Tobacco Products Labeled for Export.

(a) The provisions of this section apply to tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation.

(b) Articles described in paragraph (a) of this section may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax as provided in this part.

(c) Articles described in paragraph (a) of this section that are put up in packages may only be imported or brought into the United States, after their exportation, by release from Customs custody for delivery to the original manufacturer of such tobacco products or cigarette papers or tubes or to the proprietor of an export warehouse authorized by such manufacturer to

receive such articles. These products are transferred in bond and are released from Customs custody without payment of that part of the duty attributable to internal revenue tax.

(d) Articles described in paragraph (a) of this section that are not put up in packages may only be imported or brought into the United States by release from Customs custody without payment of tax for delivery to the original manufacturer of such articles.

(e) Articles described in paragraph (a) of this section may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

(f) The provisions of this section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) any export label.

(g) For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required by § 290.185.

(h) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

(i) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U.S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under section 275.83.

(j) For civil penalties and forfeiture provisions related to violations of this section, see § 275.83. For a criminal penalty applicable to any violation of this section see 26 U.S.C. 5762(b).

Par. 4. Section 275.83 is revised to read as follows:

§ 275.83 Penalties and forfeiture for products labeled or shipped for export.

Except for the return of exported products that are specifically authorized under § 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in title 26 U.S.C., be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.

(d) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U.S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under this section.

(e) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 5. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. The parenthetical authority citation after § 290.185 is removed.

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 7. The authority citation for part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 8. Section 296.166 is revised to read as follows:

§ 296.166 Dealing in tobacco products.

(a) All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark or notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see § 275.83.

Signed: March 1, 2001.

Bradley A. Buckles,

Director.

Approved: March 15, 2001.

Timothy E. Skud,

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

[FR Doc. 01–7409 Filed 3–23–01; 8:45 am]

BILLING CODE 4810–31–P

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Attachments and Enclosures With Bound Printed Matter

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This notice proposes a change to the standards in the Domestic Mail Manual governing permissible attachments and enclosures with Bound Printed Matter.

DATES: Comments must be received on or before April 25, 2001.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mail Preparation and Standards, USPS Headquarters, 1735 N Lynn Street, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Library, USPS Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–1540. Comments may be submitted via FAX at 703–292–4058, or Email at (jlease@email.usps.gov).

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 703–292–4184.

SUPPLEMENTARY INFORMATION:

Under current postal standards, the only attachments and enclosures authorized to be mailed with qualifying Bound Printed Matter (BPM) at BPM rates are printed matter mailable as Standard Mail and merchandise samples meeting prescribed conditions. Recently, representatives of the Postal Service and the Bound Printed Matter mailing industry have met to discuss the changing nature of Bound Printed Matter. These trends include children's books that may be partially constructed of materials other than paper such as plastic attachments, and books with "nonprint" enclosures such as CDs. Additionally, when printed matter is sold and mailed to the purchaser, it is customary to include a "premium" with the Bound Printed Matter. These attachments and enclosures do not qualify for BPM rates under current standards.

There is support among the industry and the Postal Service for non-print attachments and enclosures, not meeting today's standards, to be included with qualifying Bound Printed Matter at BPM rates. For one, as stated above, the nature of the book publishing industry is changing, especially concerning the publication of children's books. In many instances, there may be a closer relationship between the qualifying Bound Printed Matter and the ineligible attachments and enclosures than some of the "merchandise samples" that accompany Bound Printed Matter at BPM rates under today's standards and precedents. Further, the current standards are subjective and difficult to administer since they consider whether the merchandise sample is an incidental portion of the BPM and not provided exclusively or primarily as a premium or inducement for sale of the BPM. Both the Postal Service and the industry representatives desire objective standards that can be understood and consistently applied.

Accordingly, the Postal Service proposes a change to the standards governing attachments and enclosures eligible to be mailed with qualifying Bound Printed Matter at BPM rates. The change would rescind the provision concerning merchandise samples. In its place, the Postal Service proposes the inclusion of nonprint attachments and enclosures so long as such attachments and enclosures are incidental to the qualifying Bound Printed Matter material and have minimal commercial value. In each case, objective standards would be adopted for application of the tests.

The proposed rule will allow for the inclusion of nonprint attachments and enclosures so long as the combined weight of all nonprint attachments and enclosures in the mailpiece is less than or equal to 25% of the weight of the Bound Printed Matter in the mailpiece. In addition, the individual cost of each nonprint attachment or enclosure must be less than or equal to the cost of a "low cost" item as defined in DMM E670.5.11, and the combined cost of all nonprint attachments and enclosures may not exceed two times the cost of a low cost item as defined in DMM E670.5.11. (Currently, the cost of a low cost item is $7.60. This amount is determined by the Internal Revenue Service and is adjusted annually for inflation.)

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the DMM, incorporated by reference in the Code of Federal Regulations (See CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, and 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, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual E712.1.2, as follows:

E Eligibility

* * * * *

E712 Bound Printed Matter

* * * * *

1.0 BASIC STANDARDS

* * * * *

1.2 Enclosures and Attachments

[Amend 1.2 to add new standards for attachments and enclosures:]

In addition to the basic standards in E710, BPM may have the following attachments and enclosures:

a. Any printed matter mailable as Standard Mail.

b. Nonprint attachments and enclosures. The combined weight of all nonprint attachments and enclosures in the mailpiece must be less than or equal to 25% of the weight of the Bound Printed Matter in the mailpiece. The individual cost of each nonprint attachment or enclosure must be less than or equal to the cost of a "low cost" item as defined in E670.5.11. In addition, the combined cost of all nonprint attachments and enclosures must not exceed two times the cost of a "low cost" item as defined in E670.5.11.

* * * * *

An appropriate amendment to 39 CFR part 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–7415 Filed 3–23–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–6–7483; FRL–6957–9]

Proposed Approval and Promulgation of Implementation Plans; Texas; Non-Road Large Spark-Ignition Engines; Accelerated Purchase of Tier2/Tier3 Non Road Compression-Ignition Equipment; Non-Road Construction Equipment Restriction; and Electrification of Airport Ground Support Equipment for the Dallas/Ft. Worth (DFW) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan. This rule making covers four separate actions. We are proposing approval of: A rule requiring that non-road large spark-ignition engines of 25 horsepower (hp) or larger in Ellis, Johnson, Kaufman, Parker, Rockwall, Denton, Collin, Tarrant, and Dallas counties of the Dallas-Ft. Worth consolidated metropolitan statistical area (DFW area) conform to requirements identical to Title 13 of the California Code of Regulations, Chapter 9; a rule requiring accelerated purchase and operation of non-road compression-ignition fleet equipment within Collin, Denton, Tarrant, Dallas counties of the DFW area; a rule requiring limitation in the use of non-road construction equipment over 50 horsepower operating in Denton, Collin, Tarrant, and Dallas counties (the DFW ozone nonattainment area), to later in the day to reduce production of oxides of nitrogen (NO_X) during the time conducive to ozone formation; and a rule requiring owners and operators of ground support equipment (GSE) at major airports in Denton, Collin, Tarrant and Dallas counties of the DFW area to reduce NO_X emissions attributable to GSE or convert the GSE fleet to electric-powered ground support equipment.

These new rules will contribute to attainment of the ozone standard in the DFW area. The EPA is approving these revisions to the Texas SIP to regulate emissions of nitrogen dioxide in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: Written comments must be received on or before April 25, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Diana Hinds, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7561.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," and "our" refers to EPA.

This document concerns control of air pollution of oxides of nitrogen for non-road equipment sources in the DFW area and the control measures for attainment demonstration purposes. For further information, please see the Technical Support Document (TSD) prepared for this action.

What Action Are We Taking?

On April 30, 2000, the Governor of Texas submitted to EPA these four rule revisions (a requirement that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9; non-road construction equipment operating limitations; establishing accelerated purchase and operation of non-road compression-ignition fleet equipment in the DFW area; and conversion of airport ground support equipment from fossil fuel to electrical power) to the 30 TAC, Chapter 114, "Control of Air Pollution From Motor Vehicles," as a revision to the SIP.

These new rules will contribute to attainment of the ozone standard in the DFW area. The EPA is proposing to approve these revisions to the Texas SIP to regulate emissions of nitrogen dioxide in accordance with the requirements of the Federal Clean Air Act (the Act).

For more information on the SIP revision, please refer to our TSD.

What Are the Requirements of the April 30, 2000, Texas SIP for Non-Road Large Spark-Ignition (LSI) Engines?

Non-road, LSI engines are primarily used to power industrial equipment such as forklifts, generators, pumps, compressors, aerial lifts, sweepers, and large lawn tractors. The engines are similar to automotive engines and can use similar automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

Texas developed a non-road LSI engine strategy in the DFW area which establishes emission requirements for non-road, LSI engines 25 hp and larger for model year 2004 and subsequent model-year engines, and all equipment and vehicles that use such engines, by requiring non-road LSI engines to meet emission limits equivalent to, and certified in, a manner identical to 13 California Code of Regulations 9.

Although emissions from non-road, LSI engines have not yet been regulated by EPA under section 209(e)(2) of the Act (EPA proposed rules on December 7, 2000 at 65 FR 76797), the California Air Resources Board (CARB) has adopted exhaust emission standards for these engines. Section 209(e)(2)(A) of the Act authorizes EPA to approve California regulation of non-road engines other than those used in locomotives, construction and farm equipment. Section 209(e)(2)(B) of the Act allows another state to adopt requirements for non-road engines if such regulations are identical to California's requirements. EPA has promulgated regulations, codified at 40 CFR 85.1606, setting forth the criteria for adoption of California regulations regarding non-road vehicles and non-road engines. We are proposing that Texas has met the statutory and regulatory requirements for adoption of the California LSI program.

What Are the Requirements of the April 30, 2000, Texas SIP for Accelerated Purchase and Operation of Tier 2/Tier 3 Non-Road Compression-Ignition Fleet Equipment?

The adopted rules will require those in the DFW ozone nonattainment area who own or operate non-road equipment powered by compression-ignition engines 50 hp and up to meet the certain requirements regarding Tier 2 and Tier 3 emission standards. For more information on the Tier 2 and Tier 3 emission standards, see 40 CFR 89.112, "Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards." Specifically, the regulations we are proposing to approve contain the following requirements. For the portion of the fleet that is 50 hp up to 100 hp, the owner or operator must ensure that such equipment will consist of 100% Tier 2 non-road equipment by the end of the calendar year 2007. For the portion of the fleet that is 100 hp up to

750 hp, the owner or operator must ensure that such equipment consists of a minimum of 50% Tier 3 non-road equipment and the remainder of Tier 2 non-road equipment by the end of the calendar year 2007. Finally, for the portion of the fleet that is greater than 750 hp, the owner or operator must ensure that such equipment consists of 100% Tier 2 engines by the end of calendar year 2007. The equipment that does not meet these standards (or bring about equivalent emissions reductions) after the given time frame cannot be used in the four-county area. The requirements in the Texas rule can be met by retrofit of currently owned or newly purchased engines if the retrofits are certified by EPA to meet or exceed Tier 2 or Tier 3 standards. The State rules will have the effect of accelerating the turnover rate of compression-ignition engine, non-road equipment. The DFW attainment demonstration shows that emissions reductions at this chosen rate of turnover are necessary for the area to reach attainment. The Texas rule exempts non-road engines used in locomotives, underground mining equipment, marine application, aircraft, airport ground support equipment (GSE), equipment used solely for agricultural purposes, emergency equipment, and freezing weather equipment. Generally, the rules will affect diesel equipment 50 hp and larger used in construction, general industrial, lawn and garden, utility, and material handling applications.

It should be noted that the State rules afford an owner/operator an alternative means of complying with this regulation. An emissions reduction plan under this measure must be submitted by May 31, 2002, and approved by the Executive Director and EPA by May 31, 2003.

What are the Requirements of the April 30, 2000, Texas SIP for Restricting Non-Road Construction Equipment Operating Limitations?

The purpose of this rule is to establish a restriction on the use of construction equipment (non-road, heavy-duty diesel equipment rated at 50 hp and greater) as an air pollution control strategy until after 10 o'clock a.m. As a result, production of ozone precursors will be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately reducing the peak level of ozone. The restrictions apply from June 1 through October 31. The Texas regulation allows operators to submit an alternate emissions reduction plan by May 31, 2002. The alternate plan would allow operation during the restricted hours, provided the plan achieves reductions of NO_X that would result in ozone benefits equivalent to the underlying regulation.

What Are the Requirements of the April 30, 2000, Texas SIP for Conversion to Electric-Powered Ground-Support Equipment?

These rules require a reduction in NO_X of up to 90% from the 1996 contributions attributable to airport GSE from the airports which have the most air carrier operations in Collin, Dallas, Denton, and Tarrant Counties. The reductions are to be phased-in according to the following schedule: 20% by December 31, 2003, or December 31 of the year the airport becomes subject to the requirements; 50% by December 31, 2004, or by December 31 of the second year after the airport becomes subject; and 90% by December 31, 2005, or December 31 of the third year after the airport becomes subject to the requirements. The Texas regulations allow flexibility in meeting the emission reduction requirements, including emission reduction measures applied to the GSE fleet or measures applied elsewhere in the nonattainment area so long as those measures satisfy State emission reduction crediting regulations. Further, the regulations allow a GSE owner or operator to submit documentation of 100% electrification of GSE vehicles for which electrification technology exists in lieu of developing the inventory, reduction targets, and emission reduction plan. The adopted rules are necessary for the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS.

Section 209(e) of the Act prohibits States and their political subdivisions from adopting or enforcing any standard or other requirement relating to the control of emissions from non-road engines or non-road equipment. However, a general requirement that fleet operators achieve a specified level of NO_X reductions is not an emissions standard or other requirement under section 209(e)(2) of the Act. The fact that the level of required reductions is quantified and is calculated based on the level of emissions generated by the GSE fleet in-use in a prior year does not change the conclusion that assigning a general emissions reductions obligation to a fleet operator does not amount to an emissions standard on non-road equipment. Similarly, the compliance alternatives available to a fleet operator do not transform the general obligation to achieve a certain quantity of reductions into an emissions standard on non-road equipment. The fleet operator has several alternatives to show compliance with the reductions requirement. The alternative to obtain reductions from the GSE fleet itself does not mandate a specific emissions level that the equipment must achieve but instead provides the fleet operators flexibility in how they obtain the reductions, including allowing restrictions on use and operation of the equipment. The fact that the State has proposed to approve an agreement with at least one airline to meet the targeted reductions demonstrates the feasibility of achieving the reductions without total electrification of the GSE fleet.

For additional information concerning these rule revisions, please refer to our TSD.

What Areas in Texas Will This Action Affect?

The rule revisions we are proposing to approve affect the DFW area. We have classified four counties in the DFW area as a serious ozone nonattainment area: Collin, Dallas, Denton, and Tarrant. In addition, Ellis, Johnson, Kaufman, Parker, and Rockwall counties are affected by the Non-Road Large Spark-Ignition Engines rule.

Proposed Action

We are proposing approval of four rules: Non-Road Large Spark-Ignition Engines; Accelerated Purchase of Tier2/Tier 3 Non Road Compression-Ignition Equipment; Non Road Construction Equipment Restriction; and Electrification of Airport Ground Support Equipment for the Dallas/Ft. Worth (DFW) Ozone Nonattainment Area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed 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 proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same

reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. 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.*).

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List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and recordkeeping.

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

Dated: March 13, 2001.

Gerald Fontenot,

Acting Regional Administrator, Region 6.

[FR Doc. 01–7404 Filed 3–23–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6768–5]

Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, Virginia

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Under the Project XL program, the Environmental Protection Agency (EPA) is supporting a project for the Georgia-Pacific Corporation facility located in Big Island, Virginia. The terms of the project are defined in the "Georgia-Pacific Corporation Big Island, Virginia Project XL Final Project Agreement." To help implement this project, EPA is proposing amendments to Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, (promulgated in the **Federal Register** on January 12, 2001 (66 FR 3179). The amendments are applicable only to the Georgia-Pacific Big Island facility.

Because we do not anticipate receiving adverse comments on this rulemaking, the proposed amendments also are being issued as a direct final rule in the "Final Rules" section of today's **Federal Register**. If no significant and timely comments are received, no further action will be taken with respect to this proposal and the direct final rule will be become final on the date provided in that action.

DATES: Written comments must be received by April 25, 2001. Anyone requesting a public hearing must contact the EPA no later than April 5, 2001. If a hearing is held, it will be on April 23, 2001, beginning at 10:00 a.m. Requests to present oral testimony must be made by April 16, 2001. Persons interested in requesting a hearing, attending a hearing, or presenting oral testimony at a hearing should call Mr. David Beck at (919) 541–5421.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–42, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–42, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Comments also may be submitted electronically by sending electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on diskette in WordPerfect or ASCII file format. All comments in electronic form must be identified by the docket number (No. A–2000–42). No confidential business information should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

If a public hearing is held, it will take place at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Office of Environmental Policy Innovation, (MD–10), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5427.

SUPPLEMENTARY INFORMATION: For additional information on the amendments and supplementary information related to the amendments, see the direct final rule published in the "Final Rules" section of today's **Federal Register**.

Dated: March 20, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–7400 Filed 3–23–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6934–8]

Withdrawal of Certain Federal Human Health and Aquatic Life Water Quality Criteria Applicable to Vermont, the District of Columbia, Kansas and New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: In 1992, EPA promulgated Federal regulations establishing water quality criteria for toxic pollutants for fourteen States and jurisdictions, including Vermont, the District of Columbia, Kansas and New Jersey. These States have now adopted, and EPA has approved, human health and aquatic life water quality criteria for many of these pollutants. In this action, EPA is proposing to amend the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States. EPA is providing an opportunity for public comment on the proposed withdrawal of the Federal criteria applicable to these States because the States' adopted criteria are less stringent than the Federal criteria.

DATES: EPA will accept public comments on its proposed withdrawal of these criteria until May 25, 2001. Comments postmarked after this date may not be considered.

ADDRESSES: An original and three copies of comments should be submitted to W–00–23, WQCR Comment Clerk; Water Docket (MC–4101), 1200 Pennsylvania Ave NW, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to OW-Docket@.epa.gov. Hand delivered comments should be submitted to W–00–23, WQCR Comment Clerk, Water Docket, EB 57, 401 M St. SW, Washington DC 20460.

The administrative record for consideration of Vermont's human health criteria is available for public inspection at EPA Region 1, Office of Water, 1 Congress Street, Suite 1100, Boston MA 02114–1505 during normal business hours of 9:00 a.m. to 5:00 p.m. The administrative record for consideration of the District of Columbia human health criteria is available at EPA Region 3, Water Protection Division, 1650 Arch St, Philadelphia PA 19103–2029 during normal business hours of 9:00 am to 5:00 pm. The administrative record for consideration of Kansas' human health and aquatic life criteria is available for public inspection at EPA Region 7, Water, Wetland and Pesticides Division, 901 North 5th Street, Kansas City, Kansas 66101 during normal business hours of 8:00 a.m. to 4:30 p.m. The administrative record for consideration of New Jersey's human health and aquatic life criteria is available for public inspection at EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 during normal business hours of 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner at EPA Headquarters, Office of Water (4305), 1200 Pennsylvania Ave NW, Washington, D.C., 20460 (tel: 202–260–7309, fax 202–260–9830) or email *gardner.thomas@epa.gov*. Alternatively, for questions regarding Vermont, contact Bill Beckwith in EPA's Region 1 at 617–918–1544; for questions regarding the District of Columbia, contact Garrison Miller in EPA's Region 3 at 215–814–5745; for questions regarding Kansas, contact Anu Jacobs in EPA's Region 7 at 913–551–7930; and for questions regarding New Jersey, contact Wayne Jackson in EPA's Region 2 at 212–637–3807.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Vermont, Kansas, the District of Columbia and New Jersey may be interested in this proposed rulemaking. Entities discharging toxic pollutants to waters of the United States in these States could be affected by this proposed rulemaking since criteria are used in determining NPDES permit limits. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging toxic pollutants to surface waters in Vermont, the District of Columbia, Kansas and New Jersey.
Municipalities	Publicly-owned treatment works discharging toxic pollutants to surface waters in Vermont, the District of Columbia, Kansas and New Jersey.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in section 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

In 1992, EPA promulgated a final rule (known as the "National Toxics Rule", or "NTR") to establish numeric water quality criteria for 12 States and two Territories (hereafter "States") that had not complied fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw its criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary (see 65 FR 19659). However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will withdraw the federally promulgated criteria after notice and opportunity for public comment. (see 57 FR 60860)

In today's action, EPA is proposing to amend the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States, and providing an opportunity for

public comment. In addition, this action proposes certain non substantive revisions to the regulatory language at 40 CFR 131.36 to make it more user-friendly and to reflect format changes in water quality standards that have occurred in the corresponding state regulations cited at 40 CFR 131.36.

Vermont

On July 12, 1994, Vermont adopted revisions to its surface water quality standards (Appendix C, *Vermont Water Quality Standards,* effective August 1, 1994). EPA Region 1 approved the State's adoption of criteria for all toxics contained in the NTR on December 5, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Vermont for which the State now has numeric criteria.

In an earlier action, EPA withdrew Vermont from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses an arsenic criterion Vermont adopted that is less stringent than the corresponding Federal criteria in the NTR, but that nonetheless meets the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In reviewing Vermont's submission, EPA Region 1 concluded that the State's calculation of the arsenic human health criterion for the consumption of fish (organisms only) of 1.5 ug/L was scientifically defensible. EPA solicits comment on removing the Federal organism only human health criterion for arsenic applicable to Vermont (see column D2 of the table at 40 CFR 131.36 for the currently applicable Federal criterion).

District of Columbia

On March 4, 1994, the District of Columbia adopted revisions to its surface water quality standards [amended Chapter 11 of Title 21 DCMR pursuant to the authority set forth in Section 5 of the Water Pollution Control Act of 1984, D.C. Law 5–188, effective March 16,1985, D.C. Code Section 6–924(1988) and Mayor's Order 85–152, September 12,1985], adopting human health criteria to protect from effects related to fish consumption and removing the public water supply use designation. EPA Region 3 approved these revisions on November 4, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11. EPA Region 3 requested that the Agency withdraw the Federal human health—water and organism criteria and human health—organism only criteria applicable to the District (see columns D1 and D2, respectively, of the Table at 40 CFR 131.36) now that the District no longer has any waters designated as public water supply.

In an earlier action, EPA withdrew the District of Columbia from the NTR for human health—organism only criteria where the District adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses the District's removal of the public water supply use designation and the human health criteria for water and organisms. The District no longer has any waterbodies designated for public water supply and therefore no longer has need for human health criteria for water and organisms. EPA solicits comment on removing the District from the NTR for human health water and organism criteria (See column D2 of the Table at 40 CFR 131.36 for the currently applicable Federal criteria).

Kansas

On June 28, 1994, Kansas adopted revisions to its water quality standards (K.A.R. 28–16–28) regarding both human health and aquatic life criteria, and submitted them to EPA Region 7 for review and approval on October 31, 1994. On February 19, 1998, EPA Region 7 approved certain new or revised water quality criteria for the protection of human health and aquatic life because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria. Also, on June 29, 1999, Kansas adopted new and revised ambient water quality criteria for additional pollutants. They were submitted to EPA for review and approval on August 10, 1999. On January 19, 2000, EPA Region 7 approved these additional criteria because they are also consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria.

In an earlier action, EPA withdrew Kansas from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria. (See 65 FR 19659, April 12, 2000) Today's action addresses arsenic and cadmium criteria Kansas adopted that are less stringent than the corresponding criteria in the NTR, but that nonetheless meet the requirements of the CWA and EPA's implementing regulation at 40 CFR 131.11. In reviewing Kansas's submission, EPA Region 7 concluded that the State's calculation of an arsenic human health criteria for the consumption of fish (organisms only) of 20.5 ug/L was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Maximum Concentration) of 4.5 ug/l was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Continuous Concentration) of 2.5 ug/L was scientifically defensible, and that these criteria meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In today's action, EPA is soliciting comment on removing the Federal human health—organisms only criteria for arsenic (see column D2 of the table at 40 CFR 131.36 for the currently applicable Federal criteria) and acute and chronic cadmium criteria (see columns B1 and B2, respectively, of the table at 40 CFR 131.36 for the currently applicable Federal criteria) for Kansas.

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 adopted revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for some of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Deleware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's PCB human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 2 requested that the Agency withdraw the Federal criteria applicable to New Jersey for which the State now has numeric criteria.

For many pollutants, New Jersey adopted water quality criteria as stringent as the Federal criteria. In a separate upcoming final action, EPA will withdraw without public comment those criteria that are no less stringent than the Federal criteria. Today's action addresses the criteria New Jersey adopted for aquatic life and human health that are less stringent than the promulgated Federal criteria, but that nonetheless meet the requirements of

the CWA and EPA's implementing regulations at 40 CFR Part 131.11. New Jersey adopted the following less stringent criteria (ug/L):

A		B Freshwater		C Saltwater		D Human health	
(#) Compound	CAS number	CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2	D1	D2
7 Lead	7439921	.....	[b,c] 16.0	.....	.....	.....	.....
14 Cyanide	57125	.....	.....	.....	.....	[a] 768	.....
21 Carbon Tetrachloride	56235	.....	.....	.....	.....	[a] 0.363	[a] 6.31
27 Dichlorobromomethane	75274	.....	.....	.....	.....	[b] 0.559	[b] 55.7
30 1,1-Dichloroethylene	75354	.....	.....	.....	.....	[a] 4.81	
33 Ethylbenzene	100414	.....	.....	.....	.....	[b] 3120	
39 Toluene	108883	.....	.....	.....	.....	[a] 7440	[b] 201,000
42 1,1,2-Trichloroethane	79005	.....	.....	.....	.....	[a] 13.5	
49 2,4-Dinitrophenol	51285	.....	.....	.....	.....	.....	[b] 14,300
54 Phenol	108952	.....	.....	.....	.....	.....	[b] 4,620,000
67 Bis2(Chloroisopropyl) Ether	39638–32–9	.....	.....	.....	.....	.....	[b] 17,400
75 1,2-Dichorobenzene	95501	.....	.....	.....	.....	.....	[b] 17,400
76 1,3-Dichorobenzene	541731	.....	.....	.....	.....	[a] 2620	[b] 22,200
77 1,4-Dichorobenzene	106467	.....	.....	.....	.....	419	[a] 3870
80 Dimethyl-Phthalate	131113	.....	.....	.....	.....	.....	[b] 2,990,000
81 Di-n-Butyl Phthalate	84742	.....	.....	.....	.....	[a] 3530	[a] 15,700
82 2,4-Dinitrotoluene	121142	.....	.....	.....	.....	[a] 69.2	[b] 5670
86 Fluoranthene	206440	.....	.....	.....	.....	[a] 310	[a] 393
87 Fluorene	86737	.....	.....	.....	.....	[a] 1340	
89 Hexachlorobutadiene	87683	.....	.....	.....	.....	[a] 6.94	
90 Hexachlorocyclopentadiene	77474	.....	.....	.....	.....	.....	[b] 17,400
91 Hexachloroethane	67721	.....	.....	.....	.....	[a] 2.73	[a] 12.4
93 Isophorone	78591	.....	.....	.....	.....	[a] 552	[b] 2590
102 Aldrin	309002	.....	.....	.....	.....	[a] 0.00189	[b] 0.0226
109 4,4′-DDE	72559	.....	.....	.....	.....	[b] 0.0054	[b] 0.00585
110 4,4′-DDD	72548	.....	.....	.....	.....	[b] 0.00432	[b] 0.00436
112 alpha-Endosulfan	959988	.....	.....	.....	.....	[b] 111	[b] 239
113 beta-Endosulfan	33213659	.....	.....	.....	.....	[b] 111	[b] 239

[a] Number applies statewide. More restrictive criteria may apply in portions of the Delaware River and its tributaries.
[b] Number applies only in certain portions of the Delaware River.
[c] The freshwater criterion for this metal is expressed as a function of hardness in the water column. The value given here corresponds to a hardness of 100 mg/l.

In reviewing New Jersey's submission, EPA Region 2 concluded that the State's adopted criteria are scientifically defensible. EPA solicits comment on removing the Federal criteria for these pollutants in New Jersey (see the currently applicable Federal criteria for the individual pollutants in the table at 40 CFR 131.36).

In 1994, NJ reorganized certain use classification requirements pertaining to the Delaware River and Bay, including a definition of the appropriate points of application for criteria in these waters. EPA is here proposing corresponding revisions to 40 CFR 131.36 (d)(3) to be consistent with the State regulations that the Federal regulations are intended to augment. In addition, on November 9, 1999, EPA amended the NTR criteria for PCBs-human health (columns D1 and D2 of the table at 40 CFR 131.36) to provide for a total criteria for this pollutant, in lieu of criteria for individual isomers (see 64 FR 61181). EPA is here proposing corresponding revisions to 40 CFR 131.36 (d)(3) to be consistent with this change. These proposed changes do not result in any substantive changes to the Federal criteria applicable to New Jersey. These proposed revisions clarify the existing Federal regulations.

Administrative Requirements

This proposed withdrawal of Federal criteria is deregulatory in nature and would impose no additional regulatory requirements or costs on anyone. Therefore, it has been determined that this proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget. For the same reason, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this action contains no Federal mandates for State, local or tribal governments, or the private sector, nor does it contain in regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203 and 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). Further, this rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 action 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. 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.*).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is amended by:

a. Revising the table in paragraph (d)(2)(ii).

b. Revising the table in paragraph (d)(3)(ii).

c. Revising the table in paragraph (d)(5)(ii).

d. Revising the table in paragraph (d)(9)(ii).

The revisions read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act section 303(c)(2)(B).

* * * * *

(d) * * *

(2) * * *

(ii) * * *

Use classification	Applicable criteria
Class A, B and C Waters	These classifications are assigned the criteria in: Column B2–#105

* * * * *

(ii) * * *

(3) * * *

Use classification	Applicable criteria
Freshwater Pinelands, FW2	These classifications are each assigned the criteria in: Column B1—all except #102, 105, 107, 108, 111, 112, 113, 115, 117 and 118. Column B2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a. Column D1—all at a 10^{-6} risk level except #14, 21, 23, 30, 37, 38, 39, 42, 68, 76, 81, 86, 87, 89, 91, 93, 104, and 105. Column D1—#23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105 at a 10^{-5} risk level. Column D2—all at a 10^{-6} risk level except #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105. Column D2—#23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105 at a 10^{-5} risk level.
PL (Saline Water Pinelands), SE1, SE2, SE3, SC, Delaware Bay Zone 6.	These classifications are each assigned the criteria in: Column C1— all except #102, 105, 107, 108, 111, 112, 113, 115, 117 and 118. Column C2—all except 105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a. Column D2—all at a 10^{-6} risk level except #14, 21, 23, 30, 37, 38, 42, 68, 76, 77, 81, 86, 89, 91, 93, 104, 105. Column D2—#23, 30, 37, 38, 42, 68, 89, 91, 93, 104 and 105 at 10^{-5} risk level.
Delaware River zones 1C, 1D, 1E, 2, 3, 4, and 5	Column B1—all. Column B2—all except #7. Column D1—all at a 10^{-6} risk level except #14, 23, 27, 30, 33, 37, 38, 42, 68, 76, 77, 81, 82, 89, 91, 93, 102, 104, 105, 109, 110, 112, 113. Column D1—#23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105 at a 10^{-5} risk level. Column D2—all at a 10^{-6} risk level except #23, 27, 30, 37, 38, 39, 42, 49, 54, 67, 68, 75, 76, 77, 80, 81, 82, 86, 89, 90, 91, 93, 102, 104, 105, 109, 110, 112, 113. Column D2—#23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105 at a 10^{-5} risk level.
Delaware River Zones 3, 4, and 5	These classifications are each assigned the criteria in: Column C1—all. Column C2—all.

* * * * *

(5) * * *

(ii) * * *

Use classification	Applicable criteria
Class C	This classification is assigned the additional criteria in: Column B2: #10, 118, 126.

* * * * *

(9) * * *
(ii) * * *

Use classification	Applicable criteria
Sections (2)(A), (2)(B), (2)(C), (4)	These classifications are each assigned criteria as follows: Column B1, #2. Column D2, #12, 21, 29, 39, 46, 68, 79, 81, 86, 93, 104, 114, 118.
Section (3)	This classification is assigned all criteria in: Column D1, all except #1, 9, 12, 14, 15, 17, 22, 33, 36, 39, 44, 75, 77, 79, 90, 112, 113, and 115.

* * * * *

[FR Doc. 01–7403 Filed 3–23–01; 8:45 am]
BILLING CODE 6560–50–U

Notices

Federal Register
Vol. 66, No. 58
Monday, March 26, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–01–002]

Cotton Research and Promotion Program: Request for Comments To Be Used in a Review of 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing its intention to conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of amendments to the Cotton Research and Promotion Order as provided for by the Cotton Research and Promotion Act Amendments of 1990. This notice invites all interested parties to submit written comments to the Department of Agriculture (USDA). USDA will consider these comments in determining whether a referendum is warranted. USDA should announce review results sometime during the latter part of September 2001.

DATES: Comments must be received by June 25, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, Agricultural Marketing Service, USDA, Stop 0224, 1400 Independence Avenue, SW., Room 2641–S South Building, Washington, DC 20250–0224. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718 or email at *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) authorized a national Cotton Research and Promotion Program which is industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance, and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for cotton.

The program became effective on December 31, 1966, when the Cotton Research and Promotion Order (7 CFR part 1205) was issued. Assessments began with the 1967 cotton crop. The Order was amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale, effective January 26, 1977.

The program is currently financed through assessments levied on domestic and imported cotton and cotton-containing products. Assessments under this program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, international marketing, cotton production and processing, and textile research and implementation.

The program is administered by the Cotton Board, which has thirty members, thirty alternate members and one consumer advisor. The Cotton Board is composed of representatives of cotton producers and cotton importers, each of whom has an alternate selected by the Secretary of Agriculture from nominations submitted by eligible producer and importer organizations. All members and their alternates serve terms of three years. The Cotton Board's responsibility is to administer the provisions of the Cotton Research and Promotion Order issued pursuant to the Act. These responsibilities include collecting, holding and safeguarding funds; making refunds when refunds are a provision of the Order; contracting with an organization for the development and implementation of programs of research and promotion; reviewing and making recommendations to the Secretary of Agriculture on proposed programs and budgets; and making funds available for such programs when approved. The objective of the Cotton Research and Promotion Program is to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for cotton. The Cotton Board is prohibited from participating in any matters influencing governmental policies or action except recommendations for amendments to the Order.

Amendments to the Act were enacted under subtitle G of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3909, November 28, 1990). These amendments provided for: (1) Importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) increasing the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of a producer to demand a refund of assessments. The Act Amendments of 1990 were approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26, 1991, as required by the Act. Results of this referendum were announced in a nationally distributed press release dated August 2, 1991.

The Cotton Research and Promotion Act Amendment of 1990, Section 8(c) provides that once every five years after the July 1991 referendum, the Secretary of Agriculture is to conduct a review to ascertain whether a referendum is needed. In such a referendum, producers and importers would determine whether they favor continuation of the amendments to the Order provided for in the Cotton Research and Promotion Act Amendments of 1990. These amendments to the Order were promulgated in final rules published in the **Federal Register** on December 10,

1991 (56 FR 64470), corrected at (56 FR 66670).

The results of the first review report of the Cotton Research and Promotion Program were issued on October 8, 1996. USDA announced its view (61 FR 52772) not to conduct a referendum regarding the 1991 amendments to the Order. In accordance with Section 8(c)(2) of the Act, USDA provided an opportunity for all eligible persons to request a continuance referendum on the 1991 amendments by making such a request during a sign-up period. During the period of January 15 through April 14, 1997, the Department conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria established for a continuance referendum by the Cotton Research and Promotion Act and therefore, a referendum was not conducted.

In 2001, in accordance with the provisions of the Act, the Secretary of Agriculture will conduct a review of the Cotton Research and Promotion Program Act amendments to ascertain whether a referendum is needed to determine whether producers and importers support continuation of the amendments to the Order, as provided for by the 1990 Act amendments. The Secretary of Agriculture should make a public announcement of the results of the review on September 24, 2001 (60 days after each fifth anniversary date of the referendum). If the Secretary of Agriculture determines that a referendum is needed, the Secretary of Agriculture should conduct the referendum by September 24, 2002 (within 12 months after a public announcement of the determination to conduct the referendum).

If the Secretary determines that a referendum is not warranted, a sign-up period to request such a referendum will be made available to cotton producers and importers. A referendum will be held if requested by 10 percent or more of those voting in the most recent referendum as long as not more than 20 percent are from any one State or importers of cotton. This sign-up period would begin approximately November 25, 2001 and would be announced in the **Federal Register**. If the requisite number of people request a referendum, it will be held not later than February 2003. A ninety-day comment period is provided for interested persons to provide comments to used by USDA in its review. All interested persons are invited to submit written comments.

Authority: 7 U.S.C. 2101–2118.

Dated: March 19, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Program.

[FR Doc. 01–7395 Filed 3–23–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from Child and Adult Care Food Program (CACFP) State agencies. The study will collect existing data from the State agencies related to administrative cost reimbursement of sponsoring organizations that administer the family day care homes (FDCH) portion of the Program.

DATES: Comments on this notice must be received by May 25, 2001 to be assured of consideration.

ADDRESSES: Address all comments concerning this Notice to Linda Ghelfi, Food Assistance and Rural Economy Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Washington, DC 20036–5831, 202–694–5437. Submit electronic comments to lghelfi@ers.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: CACFP Administrative Cost Reimbursement Study.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for the collection of existing data from CACFP State agencies pertaining to the sponsoring organizations that administer the Program to family day care homes (FDCH).

Abstract: USDA needs to obtain budgetary and cost information on FDCH sponsoring organizations in order to assess the CACFP administrative cost reimbursement system. Such knowledge will help the USDA determine whether future changes in that reimbursement system are warranted. Currently, very little administrative data are collected at the national level on the operations of the CACFP administrative cost reimbursement system. The last national study of those costs collected data in 1980.

To evaluate how sponsoring organizations are being reimbursed for administering family day care homes, information must be obtained from the State agencies that administer the CACFP. Existing information to be collected from the State agencies includes:

- FY2001 administrative budget and supporting documentation for each sponsoring organization
- FY2000 administrative costs reimbursement; food reimbursement; actual administrative costs, if available; and final budget amount for each sponsoring organization
- Sponsor Characteristics, including type of organization (public vs. private and multi vs. sole purpose), geographic area of operations, length of time in the Program, and numbers of sponsored homes by tier for selected months in FY2000 and FY2001.

USDA's Food and Nutrition Service (FNS) conducted management improvement training during FY2000 that impacted the format, consistency, and detail in the budgets submitted by the sponsoring organizations to their State agencies. For this reason, FY2001 budgets contain more detail on cost categories, such as wages, benefits, office rent, and supplies, than earlier years' budgets. However, in order to provide information on the relationships among reimbursements, budgets, costs, and sponsor characteristics in a timely and useful manner, end-of-year totals and sponsor characteristics are required from FY2000.

The data will be collected on a one-time basis in 2001, to provide USDA and Congress with information to inform policy and program decisions sufficiently in advance of reauthorization.

The FY2001 budgets are expected to be readily available for clerical staff to photocopy. The FY2001 budgets are one to two pages and the budget justification is expected to average approximately 10 pages. This justification explains what costs the sponsor has reported in each budget category and will allow an analysis of budgets by types of expenses. State requests for budget changes or clarifications will most often be a few pages of correspondence between the State and the sponsor. Collection of the correspondence that was required for the State to approve the sponsor's budget at time of initial submission will also help clarify how

costs are classified by budget category. The FY2000 totals are expected to be readily available in computer files from which they can be extracted and sent in by e-mail or by mail on either computer-readable diskette or a few pages of computer printout. Sponsor characteristics are expected to be known by State agency staff or easily extracted from files and will be reportable on a form provided to each State office that may be completed electronically or by hand. Burden is minimized by collecting sponsoring organization information from the State agencies rather than from each of the 1,138 individual sponsoring organizations.

Estimate of Burden: We estimate the burden to each State agency to be as follows:

Retrieval, compilation, and sending of electronic information on all its sponsoring organizations—2 hours.

Clerical time to locate, copy, compile, and send information on each sponsoring organization that is not electronically available—30 minutes for each sponsor file.

Respondents: Respondents include staff of State agencies that administer the CACFP.

Estimated Number of Respondents: 53 agencies in total; including 49 State agencies, the Mid-Atlantic FNS Regional Office that administers the CACFP in Virginia, and the CACFP agencies in the District of Columbia, Puerto Rico, and Guam.

Estimated Total Annual Burden on Respondents: Total of 675 hours.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address stated in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: March 16, 2001.

Susan E. Offutt,

Administrator, Economic Research Service.

[FR Doc. 01–7396 Filed 3–23–01; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

CA–189

Dinuba Sales Yard, Cutler, California

IN–166

United Producers, Inc., Little York, Indiana

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, Room 1521 South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250, by April 10, 2001.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, DC, this 13th day of March 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–7333 Filed 3–23–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Optical Associates, Inc.

In the Matter of: Optical Associates, Inc., 1425 McCandless Drive, Milpitas, California 95035, Respondent

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Optical Associates, Inc. (OAI) of its intention to initiate an administrative proceeding against it pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 2000)) (the Act),[1] and the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2000)) (the Regulations),[2] based on allegations that, on or about December 2, 1998, OAI exported a U.S.-origin Mask Aligner and parts from the United States to Bhaba Atomic Research Center (BARC), an entity on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a Department of Commerce license as required by section 744.11 of the Regulations, in violation of section 764.2(a) of the Regulations, and;

BXA and OAI having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It Is Therefore Ordered

First, that, for a period of three years from the date of this Order, Optical, Associates, Inc., 1425 McCandless Drive, Milpitas, California, 95035, and all of its successors or assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (64 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 2000)). The Act was reauthorized on November 13, 2000. See Pub. L. No. 106–508.

[2] The violation at issued occurred in 1998. The Regulations governing the violation at issue are codified at 15 CFR Parts 730–744 (1998), and to the degree to which they pertain to this matter, are substantially the same as the 2000 version of the Regulations.

technology (hereinafter collectively referred to as "item") that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United Stats to India that is subject to the Regulations, or in any other activity subject to the Regulations that involves India.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations to India;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to India, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to India;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to India; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to India, and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to India. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 15th day of March, 2001.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 01–7387 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 10, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on electrolytic manganese dioxide from Japan. The review covers one producer/exporter, Tosoh Corporation, during the period of review April 1, 1999, through December 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. We did not receive any comments. The review indicates the existence of no dumping margins for Tosoh Corporation during this period.

EFFECTIVE DATE: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Karin Ryerson or Richard Rimlinger, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3174 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On January 10, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. See *Preliminary Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Japan*, 66 FR 1948 (January 10, 2001) (Preliminary Results).

Scope of Review

Imports covered by this review are shipments of EMD from Japan. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms (powder, chip, or plate) and two grades (alkaline and zinc chloride). EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Analysis of Comments Received

We received no comments from interested parties as a result of our preliminary results of review. Therefore, we are adopting those preliminary results as the final results of this review.

Sunset Revocation

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty

order on EMD from Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order was revoked on May 31, 2000, as a result of the ITC's determination, with an effective date of January 1, 2000, no deposit requirements are effective for shipments entered, or withdrawn from warehouse, for consumption on or after January 1, 2000.

Final Results of Review

We have determined that a weighted-average margin of zero percent exists for Tosoh for the period April 1, 1999, through December 31, 1999. The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We will direct Customs to liquidate affected entries during the review period at a rate of zero percent.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 16, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

[FR Doc. 01–7405 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review.

EFFECTIVE DATE: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen at (202) 482–4195 or Ron Trentham at (202) 482–6320, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On July 20, 2000, the Department received a request from Shandong Jinma Industrial Group Co., Ltd. to conduct a new shipper review of the antidumping order on heavy forged hand tools from the People's Republic of China. On October 6, 2000, the Department published its initiation of this new shipper review covering the period of February 1, 2000 through July 31, 2000 (65 FR 59824). The preliminary results are currently due no later than March 27, 2001.

Extension of Time Limit for Preliminary Results of Review

Section 351.214(i)(1) of the Department's regulations requires the Department to make a preliminary determination within 180 days after the date on which the new shipper review was initiated. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, under § 351.214(i)(2) of the Department's regulations the Secretary may extend the 180-day period to 300 days.

We determine that this new shipper review is extraordinarily complicated. Therefore the Department is extending the time limit for completion of the preliminary results until no later than July 25, 2001. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act, as amended, and § 351.214(i)(2) of the Department's regulations.

Dated: March 20, 2001.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–7407 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Kate Johnson, or Dinah McDougall at (202) 482–4136, (202) 482–4929, or (202) 482–3773, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Postponement of Final Results of Administrative Review

The Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on Certain Preserved Mushrooms from India on March 8, 2001 (66 FR 13896). The current deadline for the final results in this review is July 6, 2001. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame due to the fact that one of the verifications was not completed until shortly before the preliminary results and the verification report was not released until after the preliminary results. In addition, one of the respondents retained new counsel and has requested additional time to prepare for the final arguments in this review. Thus, the Department is extending the time limit for completion of the final results until August 6, 2001, which is 151 days after the date on which notice of the preliminary results was published in the **Federal Register**.

Dated: March 19, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–7406 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–006. *Applicant:* University of Wisconsin-Madison, 750 University Avenue, A.W. Peterson Building, Madison, WI 53706. *Instrument:* Photoelectron Emission Microscope, Model PEEM III. *Manufacturer:* ELMITEC Elektronenmikroskopie, Germany. *Intended Use:* The instrument is intended to be used in conjunction with a synchrotron x-ray source to perform spatially resolved element and chemical state analysis. In addition, the instrument will be used to study a wide range of specimen types, including biological specimens and material science samples. Specific experimental projects will include:

(1) Gadolinium neutron capture therapy for brain cancer—detect and map the uptake of Gd containing drugs in cancer cells and tissue, hence directly test the efficacy of potential anti-cancer drugs before clinical trials,

(2) Geomicrobiology—investigate the chemical mechanisms which allow microorganisms to interact with and gain energy from the environment which occurs at a sub micron scale, and

(3) Colossal magnetoresistive materials—verifying or refuting a number of theories that predict unusual behavior of electrons in the manganate series of these materials.

Application accepted by Commissioner of Customs: March 1, 2001.

Docket Number: 01–007. *Applicant:* University of Wisconsin-Madison, 750 University Avenue, A.W. Peterson Building, Madison, WI 53706. *Instrument:* Sample Preparation Chamber with accessories. *Manufacturer:* ELMITEC Elektronenmikroskopie, Germany. *Intended Use:* The instrument is intended to be used for studies of spatially resolved x-ray absorption techniques for chemical analysis of complex biological, environmental and materials science specimens. The principal experiments are: (1) Investigation of the uptake of gadolinium containing drugs in tumor cells and tissue for novel cancer therapies, (2) geomicrobiology—the chemical interactions between microorganisms and mineral environments and (3) investigation of the electronic behavior of colossal magnetoresistant manganates. In addition, the instrument will be used to demonstrate microchemical analysis through x-ray absorption spectromicroscopy in a graduate level course on physical techniques in biophysics. Application accepted by Commissioner of Customs: February 27, 2001.

Docket Number: 01–008. *Applicant:* Boston College, Department of Physics, 140 Commonwealth Avenue, Chestnut Hill, MA 02467. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to study the microstructure of nano materials such as carbon nanotubes, catalysts for the growth of carbon nanotubes, high temperature superconductors, ceramics, semiconductors. While the instrument will be used primarily for research purposes, it will also be used on a one-on-one basis for training of faculty and graduate students in electron microscopy.

Application accepted by Commissioner of Customs: March 1, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–7408 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 00121 4351–0351–01]

Announcement of the Call for Applications for the Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commcerce.

SUMMARY: The U.S. Department of Commerce (DOC) [pursuant to section 18 of Public law 106–513 (S. 1482)] is announcing a Call for Applications for the Dr. Nancy Foster Scholarship Program. The program is administered through the National Oceanic and Atmospheric Administration's National Ocean Service.

DATES: The Call for Applications will run from March 26 through April 22, 2001. Application packages must be postmarked by April 22, 2001 to be eligible for consideration.

ADDRESSES: Dr. Nancy Foster Scholarship Program, Office of the Assistant Administrator, 13th Floor, 1305 East-West Highway, Silver Spring, MD 20910–3281.

FOR FURTHER INFORMATION CONTACT: For further information contact: Joanne Flanders (301) 713–3074.

SUPPLEMENTARY INFORMATION: The purposes of the Dr. Nancy Foster Scholarship Program are: (1) To recognize outstanding scholarship in oceanography, marine biology, or maritime archaeology, including the curation, preservation, and display of maritime artifacts, particularly by women and members of minority groups; and, (2) to encourage independent graduate level research in oceanography, marine biology, or maritime archaeology. Each Dr. Nancy Foster Scholarship shall be used to support graduate studies in oceanography, marine biology, or maritime archaeology at a graduate level institution of higher education; and be awarded in accordance with guidelines issued by the Secretary. These shall be known as Dr. Nancy Foster Scholarships. Program details and application guidelines should be accessed via the Internet: http://fosterscholars.noaa.gov/.

Dated: March 21, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–7486 Filed 3–22–01; 9:40 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032101C]

North Pacific 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 North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The Council and its advisory committees will meet April 9 through April 16, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, AK, unless otherwise noted.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel meeting will begin on Monday, April 9, at 8 a.m., reconvening daily through Friday. The Council's Scientific and Statistical Committee (SSC) meeting will begin on Monday, April 9, at 8 a.m., reconvening each day through Wednesday. The Council's plenary session will begin on Wednesday, April 11, reconvening daily through Monday, April 16. All meetings are open to the public except executive sessions which may be held during the week at which the Council may discuss personnel issues and/or current litigation.

Council: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Dept. of Fish and Game.
(c) NMFS Management Report.
(d) Enforcement and Surveillance reports by NMFS and the U.S. Coast Guard.
2. Halibut Charter Individual Fishing Quotas (IFQ): Final Action.
3. Steller sea lion (SSL) measures:
(a) Status reports on analysis, alternatives, and independent scientific review.
(b) Review report of the SSL Reasonable and Prudent Alternative Committee and provide further direction.
(c) Discuss and provide recommendations for management measures for the second half of 2001.
4. American Fisheries Act:
(a) Initial review of a cooperative leasing proposal. Direction to staff.
(b) Review and comment on salmon bycatch inter-co-op agreement.
5. Gulf of Alaska Rationalization: Review committee report and provide further direction to staff.
6. Bering Sea/Aleutian Islands Crab Rationalization: Review committee report and provide further direction to staff.
7. Staff Tasking: Review current staff tasking and projects to be tasked; provide direction to staff.

Advisory Meetings

Advisory Panel: The agenda for the Advisory Panel will mirror that of the Council listed above, with the exception of the reports under Item 1.

Scientific and Statistical Committee: The Scientific and Statistical Committee will address the following issues:

1. Discussion of the review of the November 30, 2001 biological opinion addressing Steller sea lion/groundfish fishery interactions.
2. Steller sea lion measures listed under item 3 of the Council agenda noted above.
3. Halibut Charter IFQ analysis listed under item 2 of the Council agenda noted above.

Other Committee and Workgroup Meetings

Halibut Charter IFQ Industry Workgroup will meet Monday, April 9, at 8 a.m. in the Iliamna Room at the Anchorage Hilton Hotel to review the final Halibut Charter IFQ analysis and provide comments to the North Pacific Fishery Management Council.

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly-scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 21, 2001.

Richard W. Surdi,

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

[FR Doc. 01–7430 Filed 3–23–01; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:30 a.m., Friday, April 6, 2001.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–7535 Filed 3–22–01; 2:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, April 13, 2001.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–7536 Filed 3–22–01; 2:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, April 20, 2001.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–7537 Filed 3–22–01; 2:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading.

TIME AND DATE: 11:00 a.m., Friday, April 27, 2001.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–7538 Filed 3–22–01; 2:39 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Open Meeting.

SUMMARY: The purpose of this meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School, as the board considers pertinent. This meeting will be open to the public.

DATES: The meeting will be held on Monday, April 2, 2001, from 9:00 a.m. to 4:00 p.m. and on Tuesday, April 3, 2001, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the National Defense University, Fort McNair, Hill Conference Room, Roosevelt Hall, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, California, 93943–5000, telephone number (831) 656–2514.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2. This meeting was originally scheduled for March 5 and 6, 2001, and public notice was published on February 26, 2001 (65 FR 11568). Due to administrative constraints, notice of cancellation of the March 5 and 6, 2001, meeting could not be provided prior to the meeting. Due to administrative constraints in rescheduling the meeting, the normal 15 days notice could not be provided.

Dated: March 14, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–7326 Filed 3–23–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Revised Strategy for the Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center and Solicitation of Scoping Comments

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) and the New York State Energy Research and Development Authority (NYSERDA) announce their intent to revise their strategy for completing the Draft Environmental Impact Statement (EIS) for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center (DOE/EIS–0226–D) (also referred to as the 1996 Completion and Closure Draft EIS) issued for public comment in March 1996. Under the revised strategy, DOE will prepare and issue a revised draft EIS for public comment focusing on DOE's actions to decontaminate West Valley Demonstration Project (WVDP) facilities and manage WVDP wastes controlled by DOE under the West Valley Demonstration Project Act (WVDP Act; Public Law 96–368). NYSERDA will not be a joint lead agency but will participate as envisioned under Section 6.03 of the Cooperative Agreement between United States Department of Energy and New York State Energy Research and Development Authority on the Western New York Nuclear Service Center at West Valley, New York (October 1, 1980, amended September 18, 1981) and as appropriate under the New York State Environmental Quality Review Act (SEQRA). Further, DOE intends to issue soon a Notice of Intent for a second EIS, with NYSERDA as a joint lead agency, on decommissioning and/or long-term stewardship of the WVDP and the Western New York Nuclear Service Center (WNYNSC). This approach is expected to facilitate decisions in a more tractable and timely fashion.

DATES: Although this notice expresses DOE's intent to prepare the revised Draft EIS, DOE welcomes, as part of the scoping process, comments on the plan for revising the strategy for completion of the 1996 Completion and Closure Draft EIS. Please provide comments on the plan and on the scope of the revised Draft EIS on WVDP Decontamination and Waste Management to DOE by April 25, 2001. Written comments postmarked, faxed, or e-mailed by that date will be considered in the preparation of the revised Draft EIS. Late comments will be considered to the extent practicable.

Also, DOE will hold a public scoping meeting at the Ashford Office Complex, located at 9030 Route 219 in the Town of Ashford, NY, from 7:00 to 9:30 p.m. on April 10, 2001. Make requests to speak at the public meeting by calling or writing the DOE Document Manager. (See **ADDRESSES**, below.)

ADDRESSES: Address comments on this plan for revising the strategy for completion of the 1996 Completion and Closure EIS and on the scope of the revised Draft EIS to the DOE Document Manager: Mr. Daniel W. Sullivan, West Valley Area Office, U.S. Department of Energy, 10282 Rock Springs Road, West Valley, NY 14171. Telephone: (716) 942–4016, facsimile: (716) 942–4703, or e-mail: daniel.w.sullivan@wv.doe.gov.

FOR FURTHER INFORMATION CONTACT: For information regarding the West Valley Demonstration Project or the EIS,

contact Mr. Daniel Sullivan as described above. Those seeking general information on DOE's National Environmental Policy Act (NEPA) process should contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–4600, facsimile: (202) 586–7031, or leave a message at 1–800–472–2756, toll-free.

SUPPLEMENTARY INFORMATION: The DOE and NYSERDA announce their intent to revise their strategy for completing the Draft EIS for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center (DOE/EIS–0226–D) (also referred to as the 1996 Completion and Closure Draft EIS). The Draft EIS was prepared by DOE and NYSERDA as joint lead agencies and issued for public comment in March 1996.

I. Revised NEPA Review Strategy

Under the revised strategy, DOE will prepare and issue for public comment a revised Draft EIS focusing on DOE's actions to decontaminate WVDP facilities and manage WVDP wastes controlled by DOE under the WVDP Act. The analyses and subsequent decision making with respect to this Decontamination and Waste Management EIS will focus exclusively on WVDP activities conducted by DOE and will not involve any decision making on the balance of the property at the WNYNSC. NYSERDA will not be a joint lead agency but will participate as envisioned under Section 6.03 of the Cooperative Agreement between United States Department of Energy and New York State Energy Research and Development Authority on the Western New York Nuclear Service Center at West Valley, New York (October 1, 1980, amended September 18, 1981) and as appropriate under SEQRA. The Nuclear Regulatory Commission does not intend to be a Cooperating Agency on the Decontamination and Waste Management EIS, because the Commission is not prescribing criteria for the activities to be considered in this revised EIS. DOE will inform the Commission of WVDP activities and progress as required under the WVDP Act and the Memorandum of Understanding between DOE and the Commission.

In accordance with Council on Environmental Quality regulations for implementing NEPA (40 CFR 1508.25) DOE has determined that the decontamination and waste management actions will not be connected within the meaning of the regulations to decommissioning and/or long-term stewardship actions because decontamination and waste disposal actions can be implemented without previous or simultaneous actions being taken, are not an interdependent part of a larger action, and do not depend on a larger action for their justification. Further, the WVDP decontamination and waste management actions being proposed by DOE do not limit or prejudge the range of alternatives to be considered or the decisions to be made for eventual decommissioning of Project facilities and/or long-term stewardship of the site, which would be the focus of a second EIS (described below in Section VI).

The decontamination and waste management actions being proposed merit evaluation in an EIS, however, including adequate analysis of cumulative impacts. While the decontamination and waste management actions will share common geography with subsequent decommissioning and/or long-term stewardship actions, the regulatory and physical nature of the two categories of actions are different, as are the timing needs for decisions. This approach is expected to facilitate decisions in a more tractable and timely fashion.

Under the revised strategy, the 1996 Draft EIS will be reissued in part as a revised Draft EIS retitled the West Valley Demonstration Project Decontamination and Waste Management Environmental Impact Statement. The analysis in the revised Draft EIS will support only those DOE decisions on WVDP facility decontamination and waste management alternatives. The revised Draft EIS will include updated baseline environmental data and new EIS alternative descriptions and use new analytical techniques developed at West Valley since publication of the 1996 Completion and Closure Draft EIS. Relevant comments received on the 1996 Completion and Closure Draft EIS will be considered in the preparation of the revised Draft EIS.

In the course of quarterly public meetings and Citizen Task Force meetings held since the issuance of the 1996 Completion and Closure Draft EIS, stakeholders have had considerable opportunities to discuss pertinent issues with DOE. DOE is now formally soliciting scoping comments, which DOE will consider in preparing the Draft Decontamination and Waste Management EIS. During preparation of this EIS, DOE intends to maintain informal communications with stakeholders through ongoing quarterly meetings, at a minimum, to ensure that interested individuals, organizations, and agencies are aware of the status of EIS preparation and have a continuing forum to ask questions and provide feedback to the Department. The revised Draft EIS, when completed, will be issued to the public for review and comment in accordance with Section V of this notice.

II. DOE Responsibilities

DOE is required by Public Law 96–368, the WVDP Act, to perform a number of actions involving facilities and wastes at the West Valley site. Section 2(a)(1–5) of the Act articulates the five actions that embody the WVDP. Actions 1 and 2 address high-level waste (HLW) solidification and development of appropriate containers for the solidified wastes. Action 3 requires DOE to transport the solidified HLW to a Federal geologic repository for permanent disposal. Action 4 requires DOE to dispose of low-level and transuranic wastes generated by HLW solifidification and in connection with the WVDP. Action 5 requires DOE to decontaminate and decommission the tanks, facilities, material, and hardware used in the solidification of HLW and in connection with the WVDP.

Actions 1 and 2 were the focus of the 1982 Final EIS (DOE/EIS–0081) and Record of Decision (47 FR 40705, September 15, 1982) on the HLW solidification. The 1996 Completion and Closure Draft EIS (DOE/EIS–0226–D) comprehensively examined the remaining actions, 3, 4, and 5. Based on the comments received on the 1996 Completion and Closure Draft EIS, feedback from the Citizen Task Force, and ongoing discussions between the joint lead agencies (DOE and NYSERDA) and the Nuclear Regulatory Commission, the DOE now intends to conduct the NEPA process for actions 3, 4, and 5 in two separate EISs.

For action 3, DOE will evaluate on-site activities related to transportation of the New York State-owned solidified HLW to a federal geologic repository in the Decontamination and Waste Management EIS. Off-site activities related to HLW transportation were evaluated in the Final Waste Management Programmatic Environmental Impact Statement (WM PEIS, DOE/EIS–0200–F, May 1997). For action 4, DOE will evaluate on-site activities for transportation of low-level waste generated in connection with the WVDP in the Decontamination and Waste Management EIS; off-site

transportation activities were evaluated in the WM PEIS. DOE also will evaluate on-site and off-site transportation activities for transuranic waste associated with the WVDP in the Decontamination and Waste Management EIS.

For action 5, DOE will evaluate the decontamination of facilities, material, and hardware used in the solidification of HLW in the Decontamination and Waste Management EIS. DOE intends to analyze the decommissioning of the HLW tanks, facilities, material, and hardware used in connection with the WVDP in the EIS for decommissioning and/or long-term stewardship of the WVDP and WNYNSC, with NYSERDA as a joint lead agency.

III. Proposed Scope of the Decontamination and Waste Management EIS

A. Purpose and Need for Agency Action

Facility decontamination and waste disposal are the next DOE actions mandated by the WVDP Act that are ripe for evaluation and decision making. By implementing these actions in the near term, DOE may continue toward completion of the WVDP while decommissioning and/or long-term stewardship issues are being evaluated in a separate EIS, which DOE intends to develop jointly with NYSERDA in the near future (described below in Section VI).

The DOE needs to decide upon decontamination and waste management actions that are described below for facilities that are either no longer necessary or where decontamination will support the safer and more efficient continuation of WVDP site operations. DOE's primary objectives in this regard include both reducing risks posed to human health or the environment by removing and containing contamination and reducing the site management costs incurred by continuing to maintain unneeded facilities in a safe and operational condition.

B. Facilities and Waste Storage Areas To Be Evaluated

Potential decontamination of up to four facilities at the WVDP will be evaluated in the Decontamination and Waste Management EIS. The evaluation will include such activities as removal of loose radioactive contamination; removal of hardware and equipment; nonstructural decontamination of walls, ceilings, and floors; and flushing and/or removal of vessels and piping. The WVDP facilities that will be evaluated are:

—*Vitrification Facility*—Houses the HLW melter and supporting systems for combining liquid HLW with borosilicate glass formers, pouring the molten glass into stainless steel canisters, and transporting those canisters to the Process Building for storage.

—*01–14 Building*—Houses the Cement Solidification System, used to combine low-level liquid wastes from HLW pretreatment into a cement blend, which was then placed into drums and removed to an on-site storage facility. The 01–14 Building also houses the Vitrification Off-Gas System.

—*HLW Storage Area*—Includes the underground HLW storage tanks, along with supporting systems for maintenance, surveillance, and waste transfer.

—*Process Building*—Includes approximately 70 rooms and cells that comprised the original NRC-licensed spent nuclear fuel reprocessing operations in the late 1960s and early 1970s. Parts of this building have been decontaminated and modified to support WVDP operation, while other parts remain highly contaminated from fuel reprocessing operations. One of the large cells in the Process Building also serves as the storage facility for vitrified HLW canisters.

The WVDP storage areas that contain the Project's low-level radioactive wastes, which will be evaluated for removal and offsite disposal, are:

—*Lag Storage Area*—Includes several facilities used to store and manage the radioactive wastes generated from WVDP activities. Wastes currently in storage include Class A, B, and C low-level wastes, transuranic waste, and greater-than-Class C wastes.

—*Radwaste Treatment System Drum Cell*—Stores cement-filled drums of stabilized low-level waste produced by the Cement Solidification System.

—*Various Other Locations*—Soils estimated to contain very low levels of radioactive contamination are stored in large containers in various locations.

C. Proposed Action

DOE's Proposed Action under the Decontamination and Waste Management EIS will be to decontaminate the four Project facilities described above and to dispose of Project-generated low-level waste controlled by DOE under the WVDP Act. The remaining facilities for which the DOE is responsible, along with all final decommissioning and/or long-term stewardship actions to be taken by the DOE and NYSERDA, will be evaluated in a new EIS for decommissioning and/or long-term stewardship described in Section VI.

The WVDP Decontamination and Waste Management EIS will incorporate, as needed, analysis of environmental impacts at West Valley associated with implementing DOE's records of decision for the WM PEIS. Under those decisions, DOE will dispose of the Project low-level and low-level mixed waste in storage, and generated by decontamination activities, at either the Nevada Test Site or the Hanford Reservation near Richland, Washington (65 FR 10061, February 25, 2000), continue to store transuranic waste at West Valley (63 FR 3629, January 23, 1998), and continue to store the New York State-owned HLW at West Valley pending availability of a Federal geologic repository (64 FR 46661; August 26, 1999).

The WM PEIS LLW Record of Decision does not preclude DOE's use of commercial disposal facilities, consistent with current DOE Orders and appropriate site-specific NEPA analysis. Therefore, the revised Draft EIS will also assess shipment of WVDP low-level waste to the Envirocare commercial low-level waste disposal facility, near Tooele, Utah.

Any hazardous or mixed wastes generated as a result of decontamination activities will be managed in accordance with the Resource Conservation and Recovery Act (RCRA) and the WVDP Site Treatment Plan, respectively.[1]

D. Preliminary Alternatives To Be Evaluated

In the Decontamination and Waste Management EIS, DOE intends to evaluate the range of alternatives for decontamination of Project facilities. These include a "no action" alternative, which will evaluate continued current decontamination and waste management operations at the WVDP. The other alternatives will evaluate

[1] Any decontamination activities that may be performed following issuance of the Record of Decision for the Decontamination and Waste Management EIS will also provide information associated with RCRA hazardous wastes and mixed wastes, as well as potential future measures that may be needed to manage these wastes. Management of RCRA wastes identified and/or generated during these activities may be performed in accordance with the provisions of the RCRA 3008(h) Administrative Order on Consent between the DOE and NYSERDA, and the New York State Department of Environmental Conservation (DEC) and U.S. Environmental Protection Agency (EPA). This information will also be factored into long-term decision making associated with the decommissioning and/or long-term stewardship EIS, which will be coordinated with the DEC and EPA to meet the requirements of the RCRA 3008(h) Consent Order.

decontaminating different sets of WVDP facilities and areas within them. The three alternatives DOE is proposing to evaluate are summarized below. DOE will identify its Preferred Alternative in the Draft EIS.

No Action Alternative—Minimum Decontamination and Off-Site Waste Disposal Alternative

This alternative is considered the "no action" alternative required to be analyzed under Council on Environmental Quality and DOE NEPA regulations, and involves no change from the current in-progress or planned decontamination activities for WVDP facilities and waste management activities currently in progress.

These ongoing decontamination and waste management activities have already been considered under NEPA, as follows:

—1982 Final Environmental Impact Statement for Long-Term Management of Liquid High-Level Radioactive Wastes Stored at the Western New York Nuclear Service Center, West Valley (DOE/EIS–0081), Record of Decision (47 FR 40705, September 15, 1982), and two Supplement Analyses (DOE/EIS–0081–SA1, September 24, 1993; DOE/EIS–0081–SA2, June 23, 1998).

—Environmental Checklist for Removal of Class A Low-Level Radioactive Waste for Commercial Disposal (OH–WVDP–96–01), an action that was categorically excluded from further NEPA review in October 1997.

—Environmental Checklist for Decontamination Activities for the Main Plant (OH–WVDP–2000–05), an action that was categorically excluded in November 2000.

Project Facility Decontamination and Off-Site Waste Disposal Alternative

This alternative involves extensive decontamination of the Vitrification Facility, 01–14 Building, HLW Storage Area, and Process Building. Activities would include: (1) Removing any nonessential vessels, hardware, piping, and components, (2) cleaning surfaces to remove loose contamination, (3) treating or otherwise fixing-in-place remaining contamination on surfaces, as appropriate, (4) deactivating and/or removing all support systems (ventilation and utilities) no longer necessary for safe operations and maintenance, and (5) collecting and treating for disposal any effluent from the decontamination activities.

Wastes currently in storage and wastes generated by decontamination activities would be processed as necessary and shipped offsite for disposal under this alternative. A combination of truck and rail shipment modes would be used, depending on the type and amount of waste, and the intended disposal site. Any wastes for which there currently are no suitable disposal sites, such as greater-than-Class C waste, HLW, and transuranic waste, would be retained in on-site storage pending the availability of an off-site disposal location. DOE will evaluate shipment of these wastes from West Valley, as appropriate, however, so that the environmental impacts would have already been evaluated in case an opportunity to move these wastes off-site should arise.

High Activity Waste Removal and Off-Site Waste Disposal Alternative

This alternative is similar to the alternative for Project Facility Decontamination and Off-site Waste Disposal in terms of the types of decontamination activities that would be performed, but only those areas of WVDP facilities that present high health and safety risk would undergo interim decontamination. Under this alternative, selected areas in the Vitrification Facility, HLW Storage Area, and Process Building would be decontaminated, namely, those that are estimated to contain high concentrations of long-lived radionuclides. The 01–14 Building would not be decontaminated under this alternative, however, because it does not contain substantial quantities of long-lived radionuclides and does not pose a health and/or safety risk comparable to the Vitrification Facility, HLW Storage Area, and Process Building. Waste management activities to be evaluated will be comparable, however, to those under the previous alternative.

E. Preliminary Impacts To Be Analyzed

DOE has identified the following impacts for analysis in this EIS. Additional issues may be identified as a result of public comments.

- Potential impacts to the general population and on-site workers from radiological and nonradiological releases from decontamination and waste management activities
- Potential environmental impacts, including air and water quality impacts, from decontamination and waste management activities
- Potential transportation impacts from shipments of radioactive or hazardous material or radioactive, hazardous, or mixed waste generated during decontamination and waste management activities
- Potential impacts from postulated accidents
- Short-term land use impacts
- Disproportionately high and adverse effects on low-income and minority populations (environmental justice)
- Irretrievable and irreversible commitment of resources
- Native American concerns
- Unavoidable adverse impacts
- Compliance with Federal, state, and local requirements
- Cumulative impacts

IV. Public Scoping Meeting

DOE will hold a public scoping meeting on the decontamination and waste management EIS at the Ashford Office Complex, located at 9030 Route 219 in the Town of Ashford, NY, from 7:00 to 9:30 p.m. on April 10, 2001. Requests to speak at the public meeting should be made by calling or writing the DOE Document Manager (see **ADDRESSES,** above). Speakers will be scheduled on a first-come, first-served basis. Individuals may sign up at the door to speak and will be accommodated as time permits. Written comments will also be accepted at the meeting. Speakers are encouraged to provide written versions of their oral comments for the record.

The meetings will be facilitated by a moderator. WVDP personnel and the moderator may ask speakers clarifying questions. Individuals requesting to speak on behalf of an organization must identify the organization. Each speaker will be allowed five minutes to present comments unless more time is requested and available. Comments will be recorded by a court reporter and will become part of the scoping meeting record.

V. Schedule

The DOE intends to issue the draft Decontamination and Waste Management EIS in Fall 2001. A 45-day public comment period will start upon publication of the Environmental Protection Agency's **Federal Register** Notice of Availability. DOE will consider and respond to comments received on the draft Decontamination and Waste Management EIS in preparing the final EIS.

Comments received during the 1989 scoping process and from the public comment period on the 1996 Completion and Closure EIS (DOE/EIS–0226–D) will be addressed in either the draft Decontamination and Waste Management EIS or the planned EIS for decommissioning and/or long-term stewardship, depending on the nature of the specific comments received.

VI. EIS for Decommissioning and/or Long-Term Stewardship

DOE anticipates a separate announcement soon in both the **Federal Register** and the New York State Environmental Notice Bulletin providing notice of a second EIS to be prepared by DOE and NYSERDA for decommissioning and/or long-term stewardship of the WVDP and WNYNSC and a public scoping process pursuant to NEPA and SEQRA.

DOE anticipates that it will be the lead Federal agency for purposes of compliance with NEPA, and NYSERDA will be the lead agency for purposes of compliance with SEQRA. DOE also anticipates that the Nuclear Regulatory Commission will participate as a cooperating agency under NEPA, and the New York State Department of Environmental Conservation will be an involved agency under SEQRA. Although DOE envisions that DOE and NYSERDA will jointly prepare this EIS for decommissioning and/or long-term stewardship, either agency may decide to proceed independently in support of its independent mission. The Notice of Intent will provide further information on this second EIS, including the alternatives proposed to be evaluated and the opportunities for stakeholder involvement.

Issued in Washington, D.C. on March 21, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–7370 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Grand Junction Office; Notice of Floodplain/Wetlands Involvement for Ground Water Remediation Activities at Shiprock, New Mexico, Uranium Mill Tailings Remedial Action Site

AGENCY: Grand Junction Office, Department of Energy.

ACTION: Notice of Floodplain/Wetlands Involvement.

SUMMARY: The Department of Energy (DOE) hereby provides notice as required by 10 CFR part 1022, to conduct ground water remediation activities within the 100-year floodplain of the San Juan River at the Shiprock New Mexico Uranium Mill Tailings Remedial Action (UMTRA) Site, with possible impacts to wetlands. The site is located within the boundaries of the Navajo Indian Reservation. Activities are scheduled to commence in 2002, and consist of installation of extraction wells and pipeline to pump contaminated ground water from the alluvial aquifer to an evaporation pond on the terrace, in accordance with 40 CFR part 192, "Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings". A floodplain/wetlands assessment has been prepared as an appendix to the environmental assessment (EA) that analyzes the potential environmental effects of this action.

DATES: Written comments are due to the address below no later than April 25, 2001.

ADDRESSES: Written comments should be addressed to Don Metzler, U.S. Department of Energy, Grand Junction Office, 2597 B¾ Road, Grand Junction, Colorado, 81503; or transmitted by E-mail via Internet to *dmetzler@doegjpo.com;* or by facsimile to (970) 248–6040.

FOR FURTHER INFORMATION CONTACT: Donna Bergman-Tabbert, Manager, U.S. Department of Energy—Grand Junction Office, 2597 B ¾ Road, Grand Junction, Colorado 81503, Telephone 1–970–248–6001 or 1–800–399–5618, E-mail via Internet to *dbergman-tabbert@doegjpo.com*, Facsimile to 1–970–248–6023.

For Further Information on General DOE Floodplain/Wetlands Environmental Review Requirements, Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Under E.O. 11988—Floodplain Management, E. O. 11990—Protection of Wetlands, and 10 CFR part 1022—Compliance with Floodplain/ Wetlands Environmental Review Requirements, notice is given that DOE is planning ground water remediation in the San Juan River 100-year floodplain north and east of the Shiprock UMTRA site.

Remediation activities include the installation of five extraction wells in the floodplain in the most contaminated part of the plume, pumping water via underground piping to a lined evaporation pond, and spray-evaporating the water. The evaporation pond will be located on the terrace above the floodplain. Water would be withdrawn from the floodplain alluvial aquifer at the rate of 80 gallons per minute. At this rate, modeling projects the floodplain contaminants to be reduced to acceptable levels within 14 years.

The locations of the wells, piping, and pond will be determined in a ground water compliance action plan, and would avoid sensitive areas including wetlands, cultural resources, and those containing sensitive plant and animal species.

A typical extraction well would be installed in two to three days and would disturb an area of approximately 30′ X 30′. Access to the floodplain would utilize existing roads as much as possible. Because the activities are located within the Navajo Reservation, all activities will be coordinated through the Navajo Nation and other state and federal agencies including the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. A floodplain/wetlands assessment has been prepared as an appendix to the Environmental Assessment of Ground Water Compliance at the Shiprock, New Mexico, Uranium Mill Tailings Site (March, 2001).

A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Albuquerque, New Mexico on March 15, 2001.

Constance L. Soden,

Director, Environment, Safety, and Health Division, U.S. Department of Energy, Albuquerque Operations Office.

[FR Doc. 01–7389 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting .

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 12, 2001 6:00 p.m.–8:45 p.m.

ADDRESSES: Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Lois Yasutis, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *lyasutis@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order
6:00–6:20 p.m.—Chair's Remarks and Ex Officio Announcements
6:20–7:05 p.m.—Waste Pits Update and Discussion
7:05–7:20 p.m.—Update on Uranium Water Remediation Levels
7:20–7:40 p.m.—Update on Rebaseline
7:40–8:30 p.m.—Discussion and Recommendations on Public Use Scenarios
8:30–8:45 p.m.—Public Comment
8:45 p.m.—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on March 21, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7390 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 17, 2001 and Wednesday, April 18, 2001.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue, SW., (Room 5B–161), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Advisory Program from the perspective of affected groups, as well as state, local, and tribal governments. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

Preliminary Agenda

Tuesday, April 17, 2001

1:00 p.m. Public Meeting Opens
—Approve Minutes of October 12–13, 2000 Meeting
Opening Remarks
Ad hoc Committee on Science & Innovation—Status Report/Briefing
Technology Development & Transfer Committee—Report/Briefing/Resolution
Science Committee—Briefing/Resolution
Long-Term Stewardship Committee—Status Report
Ad hoc Committee on Safety and Technology—Briefing
Contracting & Management Committee—Status Report
Worker Health & Safety—Status Report
Alternatives to Incineration Committee—Status Report
5:15 p.m. Public Comment Period and Adjournment

Wednesday, April 18, 2001

8:30 a.m. Opening Remarks
FY 2002 Budget Overview Board Discussions—Work Plan Development
EM Disposition Mapping
Public Comment Period
Board Business—Approval of Resolutions—New Business—Board Calendar
Public Comment Period
Adjournment

Public Participation

This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. You may also register to speak at the meeting on April 17–18, 2001, or ask to speak during the public comment period. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chairs will conduct the meeting in an orderly manner.

Transcript and Minutes

We will make the minutes of the meeting available for public review and copying by June 17, 2001. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Public Reading Room is open Monday through Friday from 9:00 a.m.–4:00 p.m. except on Federal holidays.

Issued in Washington, DC on March 20, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7391 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).
ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 19, 2001, 5:30 p.m.–9:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky,

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order
6:10 p.m.—Approve Minutes
6:20 p.m.—Presentations, Board Response, Public Comments
8:00 p.m.—Subcommittee Reports, Board Response, Public Comments
8:30 p.m.—Administrative Issues
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling her at (270) 441–6802.

Issued at Washington, DC on March 21, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7392 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, April 11, 2001, 6 p.m.–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. An overview of the "2001 Remediation Effectiveness Report/CERCLA 5 Year Review" document will be provided by Jason Darby, DOE/ORO Project Manager.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN, between 7:30 a.m. and 5:30 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on March 21, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7393 Filed 3–23–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–870–001]

Alliant Energy Corporate Services, Inc.; Notice of Filing

March 20, 2001.

Take notice that on March 12, 2001, Alliant Energy Corporate Services, Inc., tendered for filing a corrected agreement to display the correct effective date of the agreement in the above-referenced docket filed with the Commission. In addition, it also indicates in accordance with Order No. 614, this agreement is designed as IEC Operating Companies FERC Electric Tariff Original Volume No. 2, Service Agreement No. 12.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 2, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–7455 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3288–001]

Arizona Public Service Company; Notice of Filing

March 20, 2001.

Take notice that on February 6, 2001, Arizona Public Service Company (APS), tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS–FPC/FERC rate schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority[1]	52
Arizona Electric Power Cooperative	57
Welton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2]65
Electrical District No. 1	68
Arizona Power Pooling	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aquila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[3]207
Haquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.

[2] APS–FPC/FERC Rate Schedule in effect during the refund period.

[3] APS–FPC/FERC Rate Schedule in effect during the refund period.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 30, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–7454 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–74–000]

Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC; Notice Establishing Staff Conference

March 21, 2001.

On March 14, 2001, the Commission issued an order in Docket No. RT01–74–000 requiring, among other things, Commission staff to convene a conference with representatives of GridSouth Transco, LLC (GridSouth) and South Carolina Public Service Authority (Santee Cooper) to explore solutions that will permit Santee Cooper to be included in the GridSouth RTO.[1]

Take notice that the staff conference required by the March 14, 2001 order will convene at 9:00 a.m. on Thursday, March 29, 2001, in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

All parties of record and other interested parties are welcome to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–7457 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT01–14–000 and CP00–424–002]

Distrigas of Massachusetts LLC; Notice of Compliance Filing

March 20, 2001.

Take notice that on March 14, 2001, Distrigas of Massachusetts LLC tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1, to become effective April 13, 2001.

Distrigas of Massachusetts LLC states that the purpose of this filing is to comply with the Commission's order issued December 14, 2000, in Docket No. CP00–424–001.

On July 10, 2000, Distrigas of Massachusetts Corporation filed with the Secretary of State of Delaware a certificate of conversion, by the acceptance of which Distrigas of Massachusetts Corporation was continued as Distrigas of Massachusetts

[1] Carolina Power & Light Company, *et al.*, 94 FERC ¶ 61,273.

LLC, a limited liability company. Distrigas of Massachusetts LLC filed a petition with the Commission on July 27, 2000, requesting the Commission to redesignate, in the name of Distrigas of Massachusetts LLC, all certificates issued by the Commission and all proceedings before the Commission which were in the name of Distrigas of Massachusetts Corporation. On December 14, 2000, the Commission issued an Order Granting Rehearing, which required, in ordering paragraph (C), that Distrigas of Massachusetts LLC file, within 90 days of the Order, a revised tariff bearing its name. The present filing complies with that Order.

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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7369 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–105–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 20, 2001.

Take notice that on March 13, 2001, El Paso Natural Gas Company (El Paso), a Delaware Corporation, whose address is Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP01–105–000, pursuant to section 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by sale and conveyance to Southwest Gas Corporation (Southwest), certain pipeline facilities authorized in blanket certificate issued in Docket Nos. CP82–435–000 and CP88–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

El Paso Natural Gas Company proposes to abandon by sale and conveyance to Southwest Gas Corporation Line Nos. 2130, 2102 and 2041, associated taps and the related gas service they provide, located in La Paz and Maricopa Counties, Arizona. El Paso states that over the succeeding years, both Parker and Phoenix have experienced tremendous growth in their respective populations as additional residential and commercial customers have located in the State of Arizona. This growth has extended to areas where El Paso's facilities are located. El Paso reports that Southwest has offered to purchase Line Nos. 2130, 2102, 2041, and the associated taps, with appurtenances. El Paso states that the sale would permit the facilities to be integrated into Southwest's local distribution system and that Southwest has agreed to maintain and operate the facilities.

Any questions regarding the application may be directed to:

Robert T. Tomlinson, Vice President and General Counsel, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978, Telephone: (915) 496–2600, Facsimile: (915) 496–5008

Judy A. Heineman, Director, Regulatory Affairs, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978, Telephone: (915) 496–2600, Facsimile: (915) 496–2122

Michael D. Moore, Director, Federal Agency Relations, El Paso Corporation, 601 13th Street, NW., Suite 850 South, Washington, DC 20005, Telephone: (202) 662–4310, Facsimile: (202) 662–4315

G. Mark Cook, Associate General Counsel—Pipelines, El Paso Corporation, 2000 M Street, NW., Suite 300, Washington, DC 20006, Telephone: (202) 331–4619, Facsimile: (202) 331–4617

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedure Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protests is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7363 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1051–000 and ER01–1055–000]

Elwood Energy II, LLC and Elwood Energy III, LLC; Notice of Issuance of Order

March 20, 2001.

Elwood Energy II, LLC and Elwood Energy III, LLC (collectively "Elwood") submitted for filing a rate schedule under which Elwood will engage in wholesale electric power and energy transactions at market-based rates. Elwood also requested waiver of various Commission regulations. In particular, Elwood requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Elwood.

On March 13, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Elwood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Elwood is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Elwood's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 12, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7361 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–272–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes In FERC Gas Tariff

March 20, 2001.

Take notice that on March 16, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A of the filing, to be effective April 27, 2001.

Great Lakes states that these tariff sheets are being filed to implement procedural, operational, and administrative changes to update and clarify various sections of its tariff. Great Lakes also states that none of the proposed changes will affect any of Great Lakes' currently effective rates and charges.

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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7368 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–55–000]

Mirant Americas Energy Marketing, L.P., et al. v. New York Independent System Operator, Inc., Notice of Complaint

March 20, 2001.

Take Notice that on March 16, 2001, Mirant Americas Energy Marketing, L.P., Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY-Gen, LLC tendered for filing a Motion to Intervene, Answer and Complaint Requesting Fast Track Procedures. A copy of this filing was served upon all persons on the official service list in the captioned proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 28, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before March 28, 2001. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7359 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1490–000]

New York State Reliability Council; Notice of Filing

March 21, 2001.

Take notice that on March 9, 2001, the New York State Reliability Council L.L.C. (NYSRC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational filing advising the Commission that the NYSRC has determined that the current Installed Capacity Requirement (ICR) for the New York Control Area (NYCA) should be retained for the Capability Year beginning on May 1, 2001 and ending on April 30, 2002.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 30, 2001. Protests will be considered by the Commission to

determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7458 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–49–000]

Northwest Pipeline Corporation; Notice of Site Visit

March 21, 2001.

On Tuesday, April 3, 2001, the Office of Energy Projects (OEP) staff will inspect Northwest Pipeline Corporation's (Northwest) proposed route and potential alternative routes for the Everett Delta Project in Snohomish County, Washington. The project area will be inspected by automobile and on foot, as appropriate. The site visit will start at 8 a.m. at the Embassy Suites Hotel lobby at 20610 44th Avenue W., Lynnwood, Washington. Representatives of Northwest will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation.

On the day of the site visit, the OEP staff can be reached at (202) 255–3195. For additional information before the visit, contact Douglas Sipe of the Commission's Office of Energy Projects at (202) 219–2681.

David P. Boergers,

Secretary.

[FR Doc. 01–7456 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–931–000 and ER01–931–001]

Panda Gila River, L.P.; Notice of Issuance of Order

March 20, 2001.

Panda Gila River, L.P. (Panda) submitted for filing a rate schedule under which Panda will engage in wholesale electric power and energy transactions at market-based rates. Panda also requested waiver of various Commission regulations. In particular, Panda requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Panda.

On March 14, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Panda should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Panda is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Panda's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7360 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–559–003]

Reliant Energy Gas Transmission Company; Notice Withdrawing Tariff Sheets

March 20, 2001.

Take notice that on March 13, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing a notice that it was withdrawing tariff sheets filed September 22 and 25, 2000, in this docket. Such sheets were filed as part of REGT's proposed inkind balancing option for Shippers under Rate Schedule ANS. Although REGT submits that the tariff sheet never became effective, REGT also tendered for filing the following substitute tariff sheets, requesting a November 1, 2000 effective date, to restore the tariff provisions on the applicable sheets to those in effect prior to REGT's September filings:

Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 71
Substitute First Revised Sheet No. 72
Substitute First Revised Sheet No. 74
Substitute First Revised Sheet No. 75
Substitute First Revised Sheet No. 76
Substitute Second Revised Sheet No. 311
Substitute First Revised Sheet No. 317

Any person desiring to protest said filings 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7367 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–26–003]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

March 20, 2001.

Take notice that on March 13, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, with an effective date of July 10, 1999:

Substitute Third Revised Sheet No. 159A

Tennessee states that this filing is being made in compliance with the Commission's "Order Accepting Compliance Filing Subject to Condition" issued on February 26, 2001, in the above-referenced dockets. *Tennessee Gas Pipeline Company*, 94 FERC 61,224 (2001). Tennessee further states that it is requesting an effective date of July 10, 1999 for this tariff sheet. Tennessee requests all waivers of the Commission's Regulations that my be necessary to allow this filing to become effective as of July 10, 1999.

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 taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7364 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–930–000 and ER01–930–001]

Union Power Partners, L.P.; Notice of Issuance of Order

March 20, 2001.

Union Power Partners, L.P. (Union Power) submitted for filing a rate schedule under which Union Power will engage in wholesale electric power and energy transactions at market-based rates. Union Power also requested waiver of various Commission regulations. In particular, Union Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Union Power.

On March 13, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions or liability by Union Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Union Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Union Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 12, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 01–7362 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–181–000, et al.]

New York Independent System Operator Inc., et al.; Electric Rate and Corporate Regulation Filings

March 19, 2001.

Take notice that the following filings have been made with the Commission:

1. New York Independent System Operator Inc.

[Docket Nos. ER01–181–000 and ER01–181–001]

Take notice that on March 9, 2001, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Notice of Withdrawal of its October 20, 2000 filing in Docket No. ER01–181–000. NYISO requests withdrawal of all filings in ER01–181–001 as well.

The NYISO requests a waiver of the Commission's notice requirements so that the withdrawal may become effective immediately.

The NYISO has served a copy of this filing upon each person designated on the official service list in Docket No. ER01–181–000.

Comment date: March 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. International Transmission Company

[Docket No. ER01–1303–000]

Take notice that on March 14, 2001, International Transmission Company

(ITC) tendered for filing Notice of Withdrawal of its unexecuted Interconnection Agreement with Dearborn Industrial Generation, L.L.C. ITC states that the Interconnection Agreement was filed with the Commission on February 22, 2001 in the above-captioned proceeding and that the Agreement had not yet been accepted or otherwise acted upon by the Commission.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER01–1532–000]

Take notice that on March 14, 2001, Virginia Electric and Power Company. (Dominion Virginia Power or the Company), tendered for filing the following unexecuted Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Unexecuted Third Amended Service Agreement for Firm Point-to-Point Transmission Service designated Fourth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Unexecuted Third Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Fourth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests waiver of the Commission's regulations to permit an effective date of February 12, 2001.

Copies of the filing were served upon Sempra Energy Trading Corporations, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER01–1531–000]

Take notice that on March 14, 2001, the California System Operator Corporation (ISO), tendered filing a Participating Generator Agreement between ISO and Aera Energy LLC (Aera) for acceptance by the Commission.

The ISO states that this filing has been served on Aera and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective January 19, 2001.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER01–1533–000]

Take notice that on March 14, 2001, PJM Interconnection L.L.C. (PJM), tendered for filing revisions to Section 6.5 of Schedule 11 of the Amended and Restated Operating of PJM Interconnection, L.L.C. The revisions provide that a market participant's buy bids in the PJM Capacity Credit markets be less than its lowest sell offer price and that a market participant's buy bids that are higher than its lowest sell offer will be rejected. These amendments address a market design flaw that can send distorted signals to market participants.

Copies of this filing were served upon on all members of PJM and each electric utility regulatory commission in the PJM control area.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notices.

6. Central Maine Power Company

[Docket No. ER01–1534–000]

Take notice that on March 14, 2001, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, and executed interconnection agreement (the IA) between CMP and Robbins Lumber, Inc. (Robbins Lumber).

The IA is intended to replace the Purchased Power Agreement between the parties, which expired on December 31, 2000. CMP is requesting that the IA become effective February 15, 2001.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and Robbins Lumber.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notices.

7. San Diego Gas & Electric Company

[Docket No. ER01–1339–001]

Take notice that on March 13, 2001, San Diego Gas & Electric Company (SDG&E), tendered for filing an amendment to its February 27, 2001, filing in the above-referenced docket by tendering amended cover sheets for Service Agreements Nos. 1 and 2 to its FERC Electric Tariff, First Revised Volume No. 6. Both agreements relate to the interconnection of a new generation plant to be owned by Otay Mesa Generation Company, LLC (OMG). SDG&E also tendered page 1 to Appendix D of service Agreement No. 1, which was inadvertently omitted from the filing of February 27, 2001.

SDG&E states that copies of the amendment have been served on all parties and on the California Public Utilities Commission.

Comment date: April 3, 2001, in accordance with Standard Paragraph E at the end of this notices.

8. Westar Generating, Inc.

[Docket No. ER01–1305–001]

Take notice that on March 13, 2001, Westar Generating, Inc., tendered for filing corrections to its February 23, 2001, filing in the above referenced docket number.

Comment date: April 3, 2001, in accordance with Standard Paragraph E at the end of this notices.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us./efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–7358 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1535–000, et al.]

Niagara Mohawk Power Corporation, et al., Electric Rate and Corporate Regulation Filings

March 20, 2001.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER01–1535–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 108 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Brockton, New York pursuant to FERC Rate Schedule No. 108, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER01–1536–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 103 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Andover, New York pursuant to FERC Rate Schedule No. 103, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER01–1537–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 114 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Akron, New York pursuant to FERC Rate Schedule No. 114, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER01–1538–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 137 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Frankfort, New York pursuant to FERC Rate Schedule No. 137, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER01–1539–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 112 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Churchville, New York pursuant to FERC Rate Schedule No. 112, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER01–1540–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 110 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Boonville, New York pursuant to FERC Rate Schedule No. 110, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER01–1541–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 119 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Holley, New York pursuant to FERC Rate Schedule No. 119, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER01–1542–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 104 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Arcade, New York pursuant to FERC Rate Schedule No. 104, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER01–1543–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 106 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Ilion, New York pursuant to FERC Rate Schedule No. 106, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER01–1544–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 107 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Little Valley, New York pursuant to FERC Rate Schedule No. 107, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER01–1545–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 121 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Mohawk, New York pursuant to FERC Rate Schedule No. 121, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER01–1546–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 113 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Philadelphia, New York pursuant to FERC Rate Schedule No. 113, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER01–1547–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 109 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Salamanca, New York pursuant to FERC Rate Schedule No. 109, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER01–1548–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 136 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Skaneateles, New York pursuant to FERC Rate Schedule No. 136, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER01–1549–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 111 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Wellsville, New York pursuant to FERC Rate Schedule No. 111, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER01–1550–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 105 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Springville, New York pursuant to FERC Rate Schedule No. 105, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER01–1551–000]

Take notice that on March 15, 2001, Niagara Mohawk Power Corporation tendered for filing Notice of Cancellation of FERC Rate Schedule No. 116 as regards transmission service heretofore provided by Niagara Mohawk Power Corporation to the Village of Theresa, New York pursuant to FERC Rate Schedule No. 116, effective July 1, 1998.

Niagara Mohawk Power Corporation requests a rate schedule cancellation effective date of December 31, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER01–1552–000]

Take notice that on March 15, 2001, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Conoco Gas and Power Marketing, a Division of Conoco Inc.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER01–1553–000]

Take notice that on March 15, 2001, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm and Non-Firm Point-to-Point Transmission Service between Idaho Power Company and Merchant Energy Group of the Americas.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER01–668–002]

Take notice that on March 14, 2001, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing in compliance with the Federal Energy Regulatory Commission's Order in Southern Company Services, Inc., 94 FERC ¶ 61,131 (2001). In that order, the Commission accepted, subject to modification, an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff).

The purpose of the amendment was to incorporate into the Tariff specific Creditworthiness criteria, Procedures for Obtaining Interconnection Service, and Source and Sink Requirements for Point-to-Point Transmission Service. The Order required that several revisions be made to the Interconnection Procedures, established an effective date of February 13, 2001, and otherwise accepted the amendment for filing. In their compliance filing (a copy of which is posted on their OASIS site), Southern Companies incorporated those changes into the Tariff.

Comment date: April 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. GenPower Earleys, LLC

[Docket No. EG01–152–000]

Take notice that on March 15, 2001, GenPower Earleys, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends to construct an approximate 640 MW natural gas-fired combined cycle independent power production facility in Hartford County, North Carolina (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

22. PPL Wallingford Energy LLC

[Docket No. EG01–153–000]

Take notice that on March 15, 2001, PPL Wallingford Energy LLC (Applicant), having its principal place of business at Two North Ninth Street, Allentown, Pennsylvania 18101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Connecticut limited liability company formed for the purpose of operating a 250 MW natural gas-fired generation facility located in Wallingford, Connecticut. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

23. PPL Leasing Company, LLC

[Docket No. EG01–154–000]

Take notice that on March 15, 2001, PPL Leasing Company, LLC (Applicant), having its principal place of business at Two North Ninth Street, Allentown, PA 18101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Connecticut limited liability company formed for the purpose of owning five natural gas-fired turbines located in Wallingford, Connecticut and leasing those turbines to PPL Wallingford Energy LLC. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

24. Northern Iowa Windpower LLC

[Docket No. EG01–155–000]

Take notice that on March 16, 2001, Northern Iowa Windpower LLC (Northern Iowa) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Northern Iowa is developing a wind-powered eligible facility with a capacity of 80 megawatts, powered by approximately eighty-nine (89) wind turbine generators, which will be located in Worth County, Iowa.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

25. Rail Energy of Montana, LLC

[Docket No. EG01–156–000]

Take notice that on March 16, 2001, Rail Energy of Montana (REM), a Montana limited liability company, 101 International Way, Missoula, MT, 59807 filed with the Federal Energy Regulatory Commission as application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

REM is engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy and capacity at wholesale. REM intends to produce electricity using idle locomotives. REM is owned by Commercial Energy of Montana and Montana Rail Link.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

26. PPL Leasing Company, LLC

[Docket No. EL01–53–000]

Take notice that on March 15, 2001, PPL Leasing Company, LLC filed with the Federal Energy Regulatory Commission a Petition for Declaratory Order Disclaiming Jurisdiction.

Comment date: April 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–7453 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 20, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11881–000.

c. *Date filed:* February 6, 2001.

d. *Applicant:* Leota Enterprises.

e. *Name of Project:* Leamington Canyon Project.

f. *Location:* On Sevier River in Uintah County, Utah. Project would utilize no federal land or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Don E. Jorgensen, President, Leota Enterprises, HC 69 Box 176, Randlett, UT 84063 (435) 545–2509.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for Filing Motions to Intervene, Protests and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments recommendation, interventions, and protests, may be electronically filed 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.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 15-foot-long, 4-foot-high Central Utah Canal Company Diversion Dam; (2) an existing 10,000-foot-long, 34-foot wide canal; (3) a proposed 560-foot-long steel pentock; (4) a proposed powerhouse containing two generating units having a total installed capacity of 3.88 MW; (5) a proposed 15-foot-long concrete tailrace; (6) a proposed 69 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 28.3 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 01–7365 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–332–000, RP00–597–000, and RP00–597–001]

ANR Pipeline Company; Notice of Technical Conference

March 20, 2001.

On June 15, 2000, ANR Pipeline Company (ANR) filed in compliance with Order No. 637. A technical conference to discuss the various issues raised by ANR's filing was held on September 20, 2000, October 4, 2000, November 15, 2000, January 11, 2001, and February 6, 2001.

Take notice that an additional session of the technical conference will be held Wednesday, April 4, 2001, beginning at 11 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426.

Persons who wish to participate by telephone may call 1–888–658–8648 at 11 a.m. Please tell the operator that you wish to participate in Katherine Waldbauer's conference call, and the passcode is WALDBAUER

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–7366 Filed 3–23–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 21, 2001.

The Following Notice of Meeting is Published Pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 28, 2001, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

763RD—Meeting March 28, 2001 Regular Meeting 10:00 a.m.

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
DOCKET# ER01–958 000 NEVADA POWER COMPANY

CAE–2.
DOCKET# ER01–1134 000 CANAL ELECTRIC COMPANY

CAE–3.
DOCKET# ER01–1107 000 AMERICAN TRANSMISSION COMPANY, LLC

CAE–4.
OMITTED

CAE–5.
DOCKET# ER01–1213 000 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

CAE–6.
OMITTED

CAE–7.
OMITTED

CAE–8.
DOCKET# ER00–3591 000 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OTHER#S ER00–1969 000 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.; ER01–94 000 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.; ER01–180 000 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

CAE–9.
DOCKET# ER94–571 000 ALABAMA POWER COMPANY

CAE–10.
DOCKET# ER94–775 000 SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS AND ELECTRIC COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY

CAE–11.
DOCKET# ER96–2295 000 FLORIDA POWER CORPORATION

CAE–12.
DOCKET# ER99–196 001 PJM INTERCONNECTION, L.L.C.

CAE–13.
DOCKET# RT01–67 000 GRIDFLORIDA LLC, FLORIDA POWER & LIGHT COMPANY, FLORIDA POWER CORPORATION AND TAMPA ELECTRIC COMPANY
OTHER#S RT01–67 001 GRIDFLORIDA LLC, FLORIDA POWER & LIGHT COMPANY, FLORIDA POWER CORPORATION AND TAMPA ELECTRIC COMPANY

CAE–14.
DOCKET# EL00–105 001 CITY OF VERNON, CALIFORNIA

CAE–15.
DOCKET# ER00–2415 000 ENTERGY SERVICES, INC.

OTHER#S EL00–106 000 ENTERGY SERVICES, INC., ER00–2415 001 ENTERGY SERVICES, INC.
CAE–16.
DOCKET# ER96–237 002 NEW ENGLAND POWER COMPANY
CAE–17.
DOCKET# TX97–9 000 CINERGY SERVICES, INC.
CAE–18.
OMITTED
CAE–19.
OMITTED
CAE–20.
OMITTED
CAE–21.
DOCKET# TX93–4 004 FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
OTHER#S EL93–51 003 FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
CAE–22.
DOCKET# ER99–230 001 ALLIANT SERVICES COMPANY
CAE–23.
OMITTED
CAE–24.
OMITTED
CAE–25.
DOCKET# ER98–3594 003 CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–3594 004 CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION; ER98–3594 005 CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION; ER00–1239 002 CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–26.
DOCKET# ER97–1523 026 CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S OA97–470 024 CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION; ER97–4234 022 CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–27.
OMITTED
CAE–28.
DOCKET# ER00–3090 001 PJM INTERCONNECTION, INC.
CAE–29.
DOCKET# ER00–3412 001 AMEREN ENERGY GENERATING COMPANY
CAE–30.
DOCKET# ER00–3591 003 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OTHER#S ER00–1969 001 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.; ER00–3591 004 NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–31.
DOCKET# ER00–3688 001 AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–32.
DOCKET# ER00–3316 001 AMERICAN TRANSMISSION COMPANY LLC
CAE–33.
DOCKET# EG01–120 000 NEW HAVEN HARBOR POWER LLC
OTHER#S EG01–121 000 NRG CONNECTICUT POWER ASSETS LLC; EG01–122 000 BRIDGEPORT HARBOR POWER LLC
CAE–34.
DOCKET# ER01–702 000 AMERICAN TRANSMISSION COMPANY, L.L.C.
CAE–35.
DOCKET# EL99–3 000 MIDAMERICAN ENERGY COMPANY
CAE–36.
DOCKET# EL01–31 000 RUMFORD POWER ASSOCIATES L.P. AND TIVERTON POWER ASSOCIATES L.P.
CAE–37.
DOCKET# EL00–99 000 MAINE PUBLIC UTILITIES COMMISSION, UNITED ILLUMINATING COMPANY AND BANGOR HYDRO-ELECTRIC COMPANY V. ISO NEW ENGLAND, INC.
OTHER#S EL00–100 000 MAINE PUBLIC UTILITIES COMMISSION, UNITED ILLUMINATING COMPANY AND BANGOR HYDRO-ELECTRIC COMPANY V. ISO NEW ENGLAND, INC.; EL00–112 000 MAINE PUBLIC UTILITIES COMMISSION, UNITED ILLUMINATING COMPANY AND BANGOR HYDRO-ELECTRIC COMPANY V. ISO NEW ENGLAND, INC.
CAE–38.
OMITTED
CAE–39.
DOCKET# RT01–34 000 SOUTHWEST POWER POOL, INC.
OTHER#S EC99–101 003 NORTHERN STATES POWER COMPANY (MINNESOTA) AND NEW CENTURY ENERGIES, INC.; RT01–75 000 ENTERGY SERVICES, INC.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
OMITTED
CAG–2.
DOCKET# RP01–239 000 TENNESSEE GAS PIPELINE COMPANY
CAG–3.
DOCKET# RP01–245 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–4.
DOCKET# RP95–197 038 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP97–71 015 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–5.
DOCKET# RP97–288 013 TRANSWESTERN PIPELINE COMPANY
OTHER#S RP97–288 009 TRANSWESTERN PIPELINE COMPANY; RP97–288 010 TRANSWESTERN PIPELINE COMPANY; RP97–288 011 TRANSWESTERN PIPELINE COMPANY; RP97–288 012 TRANSWESTERN PIPELINE COMPANY; RP97–288 014 TRANSWESTERN PIPELINE COMPANY; RP97–288 015 TRANSWESTERN PIPELINE COMPANY
CAG–6.
DOCKET# RP01–243 000 PINE NEEDLE LNG COMPANY, LLC
CAG–7.
DOCKET# RP99–518 019 PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–8.
DOCKET# RP01–242 000 SOUTHERN NATURAL GAS COMPANY
CAG–9.
DOCKET# RP01–87 001 TENNESSEE GAS PIPELINE COMPANY
CAG–10.
DOCKET# RP01–236 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–481 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION; RP00–553 003 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–11.
DOCKET# RP01–246 000 NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–12.
DOCKET# RP01–256 000 WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–13.
OMITTED
CAG–14.
DOCKET# RP01–259 000 ANR PIPELINE COMPANY
CAG–15.
DOCKET# RP01–267 000 NORTHERN BORDER PIPELINE COMPANY
CAG–16.
DOCKET# RP01–247 000 VIKING GAS TRANSMISSION COMPANY
CAG–17.
DOCKET# RP01–238 000 TENNESSEE GAS PIPELINE COMPANY
CAG–18.
DOCKET# RP01–262 000 COLUMBIA GAS TRANSMISSION CORPORATION
CAG–19.
DOCKET# RP01–240 000 ANR PIPELINE COMPANY
CAG–20.
OMITTED
CAG–21.
DOCKET# RP01–253 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–22.
DOCKET# RP01–249 000 TRUNKLINE GAS COMPANY
CAG–23.
DOCKET# RP01–255 000 COVE POINT LNG LIMITED PARTNERSHIP
CAG–24.
DOCKET# PR01–1 000 ASSOCIATED NATURAL GAS COMPANY
CAG–25.
DOCKET# PR01–2 000 THE PEOPLES GAS LIGHT AND COKE COMPANY
CAG–26.
DOCKET# RP00–601 001 DOMINION TRANSMISSION, INC.
CAG–27.
DOCKET# RP01–81 000 TENNESSEE GAS PIPELINE COMPANY
CAG–28.
DOCKET# RP01–180 000 SAN DIEGO GAS & ELECTRIC COMPANY
OTHER#S RP01–222 000 THE LOS ANGELES DEPARTMENT OF WATER AND POWER; RP01–223 000 NATIONAL ASSOCIATION OF GAS CONSUMERS V. ALL SELLERS OF NATURAL GAS IN THE UNITED STATES OF AMERICA IN INTERSTATE COMMERCE
CAG–29.
DOCKET# RP01–20 001 TENNESSEE GAS PIPELINE COMPANY
CAG–30.
OMITTED
CAG–31.
DOCKET# RP01–25 003 TEXAS EASTERN TRANSMISSION CORPORATION
CAG–32.
DOCKET# RP01–251 000 TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–33.
DOCKET# RP99–510 002 GULF SOUTH PIPELINE COMPANY, LP (FORMERLY KOCH GATEWAY PIPELINE COMPANY)
CAG–34.
DOCKET# RP00–533 001 ALGONQUIN GAS TRANSMISSION COMPANY
OTHER#S RP00–535 001 TEXAS EASTERN TRANSMISSION CORPORATION
CAG–35.
DOCKET# RP93–109 017 WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–36.
DOCKET# OR01–2 000 BIG WEST OIL COMPANY V. FRONTIER PIPELINE COMPANY AND EXPRESS PIPELINE PARTNERSHIP
OTHER#S OR01–3 000 BIG WEST OIL COMPANY V. ANSCHUTZ RANCH EAST PIPELINE INC. AND EXPRESS PIPELINE PARTNERSHIP
CAG–37.
DOCKET# RP00–241 000 PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA V. EL PASO NATURAL GAS COMPANY, EL PASO MERCHANT ENERGY—cGAS, L.P. AND EL PASO MERCHANT ENERGY COMPANY
CAG–38.
DOCKET# RP01–27 000 SOUTHERN CALIFORNIA GAS COMPANY V. EL PASO NATURAL GAS COMPANY
CAG–39.
DOCKET# MG01–19 000 SOUTHERN NATURAL GAS COMPANY
CAG–40.
DOCKET# MG01–11 000 MOJAVE PIPELINE COMPANY

Consent Agenda—Energy Projects—Hydro

CAH–1.
DOCKET# DI99–10 001 CITY OF UNALASKA, ALASKA
CAH–2.
DOCKET# P–4632 028 CLIFTON POWER CORPORATION
CAH–3.
DOCKET# P–184 076 EL DORADO IRRIGATION DISTRICT
CAH–4.
DOCKET# P–2170 022 CHUGACH ELECTRIC ASSOCIATION, INC.
CAH–5.
DOCKET# P–4244 019 NORTHUMBERLAND HYDRO PARTNERS, L.P.
CAH–6.
DOCKET# P–2556 033 FPL ENERGY MAINE HYDRO, LLC
OTHER#S P–2557 018 FPL ENERGY MAINE HYDRO, LLC; P–2559 017 FPL ENERGY MAINE HYDRO, LLC
CAH–7.
OMITTED
CAH–8.
DOCKET# UL96–16 006 CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY
OTHER#S UL96–17 006 CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY
CAH–9.
DOCKET# P–2150 020 PUGET SOUND ENERGY, INC.
CAH–10.
DOCKET# P–10311 002 SKAGIT RIVER HYDRO
OTHER#S P–10311 003 SKAGIT RIVER HYDRO; P–10311 005 SKAGIT RIVER HYDRO
CAH–11.
DOCKET# P–2177 040 GEORGIA POWER COMPANY

Consent Agenda—Energy Projects—Certificates

CAC–1.
DOCKET# CP00–165 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAC–2.
DOCKET# CP01–26 000 TENNESSEE GAS PIPELINE COMPANY AND NATIONAL FUEL GAS SUPPLY CORPORATION
CAC–3.
DOCKET# CP00–452 000 COLORADO INTERSTATE GAS COMPANY
CAC–4.
DOCKET# CP01–12 000 EL PASO NATURAL GAS COMPANY
CAC–5.
DOCKET# CP01–41 000 EL PASO NATURAL GAS COMPANY
CAC–6.
DOCKET# CP98–131 004 VECTOR PIPELINE L.P.
CAC–7.
DOCKET# CP00–114 000 TRUNKLINE GAS COMPANY
CAC–8.
DOCKET# CP01–40 000 BITTER CREEK PIPELINES, LLC
CAC–9.
DOCKET# CP96–159 001 MISSISSIPPI CANYON GAS PIPELINE, LLC (FORMERLY SHELL GAS PIPELINE COMPANY)
OTHER#S CP96–159 004 MISSISSIPPI CANYON GAS PIPELINE, LLC (FORMERLY SHELL GAS PIPELINE COMPANY)

Energy Projects—Hydro Agenda

H–1. RESERVED

Energy Projects—Certificates Agenda

C–1.
OMITTED

Markets, Tariffs and Rates—Electric Agenda

E–1.
RESERVED

Markets, Tariffs and Rates—Gas Agenda

G–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 01–7502 Filed 3–22–01; 12:16 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42212B; FRL–6777–8]

Endocrine Disruptor Screening Program; Proposed Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: As mandated by the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), EPA is implementing an Endocrine Disruptor Screening Program (EDSP). The Agency plans to establish an Endocrine Disruptor Methods Validation Subcommittee (EDMVS) under the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist its EDSP implementation activities. NACEPT is a chartered Federal advisory committee subject to the provisions of the Federal Advisory Committee Act. Through NACEPT, the EDMVS will provide technical advice and recommendations to EPA regarding the design, conduct, and interpretation of studies, and preparation of peer review documents necessary to validate endocrine

disruptor screening and testing methods. The public meeting is intended to solicit input from interested stakeholders regarding their views on the organization of EDVMS. The Agency is interested in obtaining input from the agrichemical and commodity chemical industries; environmental/public interest organizations; public health organizations; animal welfare organizations; Federal agencies; State, local and tribal governments; academia; consumers, and the public.

DATES: The meeting will be held on April 24, 2001, from 9 a.m. to 5 p.m. Requests to participate in the meeting must be received on or before April 20, 2001.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 Fort Meyer Dr., Arlington, VA, 22209 (telephone: 703–807–2000). Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPPTS–42212B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: TSCA Hotline, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone 202–554–1404; TDD 202–554–0551; e-mail: TSCA-Hotline@epa.gov.

For technical information contact: Anthony Maciorowski, Senior Technical Advisor, Office of Prevention, Pesticides and Toxic Substances; telephone: 202–260–3048; e-mail: maciorowski.anthony@epa.gov or

Gary Timm, Senior Technical Advisor, Office of Prevention, Pesticides and Toxic Substances; telephone: 202–260–1859; e-mail: timm.gary@epa.gov

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. You may be interested in the meeting set forth in this notice if you produce, manufacture or import pesticide chemicals, substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of FFDCA, as amended by FQPA (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/scipoly. To access this document, on the Home Page select "Endocrine Disruptors" which will take you to the OSCP Endocrine Disruptor Screening Program Web Site.

2. *In person*. The Agency has established an official record for this meeting under docket control number OPPTS–42212B. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Endocrine Disruptor Methods Validation Subcommittee. This record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before April 20, 2001. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212B in the subject line on the first page of your request.

1. *By mail*. You may submit a written request to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. You may deliver a written request to: OPPT Document Control Office (DCO) in the East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your request electronically by e-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use Wordperfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. All comments in electronic form must be identified by docket control number OPPTS–42212B. You may also file a request online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: March 21, 2001.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–7505 Filed 3–22–01; 12:33 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 16, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 25, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0056.

Title: Part 68—Connection of Terminal Equipment to the Telephone Network.

Form No.: FCC Form 730.

Type of Review: Extension.

Respondents: Business or Other for Profit; Individuals or household.

Number of Respondents: 54,369.

Estimated Time Per Response: 2.2 hours (avg.); .5–20 hours per response.

Total Annual Burden: 120,459 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $2,705,000.

Frequency of Response: On occasion; Recordkeeping; Third party disclosures.

Needs and Uses: The purpose of 47 CFR Part 68 is to protect the network from certain types of harm and interference to other subscribers. To ensure that consumers, providers of telecommunications, the Administrative Council, telecommunications certification bodies (TCBs), and the Commission are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers and supplies to provide the information required by Part 68. Among other things, respondents are required to submit FCC Form 730, to disclose certain technical information, provide affidavits, and retain certain records.

OMB Control No.: 3060–0756.

Title: Procedural Requirements and Policies for Commission processing of Bell Operating Company Applications for the Provision of In-Region, InterLATA Services Under Section 271 of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit; State, Local or Tribal Government.

Number of Respondents: 75.

Estimated Time Per Response: 250.9 hours per response (avg).

Total Annual Burden: 18,820 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: The Public Notice sets forth procedural requirements and policies relating to the Commission processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to section 271 of the Communications Act of 1934, as amended. BOCs must file applications which provide information on which the applicant intends to rely in order to satisfy the requirement of section 271. State regulatory commission and Department of Justice can file written consultations relating to the applications. Interested third parties may file comments and reply comments regarding the applications. All of the requirements are used to ensure that BOCs have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to section 271.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–7372 Filed 3–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 15, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 25, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0819.

Title: Lifeline Assistance (Lifeline) Connection Assistance (Link Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form No.: FCC Form 497.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,500 respondents; 18,000 responses.

Estimated Time Per Response: 3 hours (avg.).

Frequency of Response: On occasion reporting requirement, monthly, quarterly.

Total Annual Burden: 54,000 hours.

Total Annual Cost: $0.

Needs and Uses: Eligible telecommunications carriers are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The telecommunications carriers must file FCC Form 497 to solicit reimbursement. Collection of the data is necessary for the administrator to accurately provide settlements for the low-income programs according to Commission rules.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 01–7371 Filed 3–23–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–5]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Associate Director, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. § 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 975.6(c) of the Board's regulations (12 CFR § 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2001 NOW/DDA Services) (Services not provided)

District 2.—Federal Home Loan Bank of New York (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (2001 NOW/DDA Services)

DEPOSIT PROCESSING SERVICE (DPS) EFFECTIVE 1/1/2001

DPS Deposit Tickets	$0.6750 per deposit
Printing of Deposit Tickets	Pass-through
Deposit Items Processed	Pricing varies—tiered by monthly volume
For volumes of:	
1–25,000	$0.0422 per item (transit)
25,001–58,500	0.0417 per item (transit)
58,501–91,500	0.0412 per item (transit)
91,501–125,000	0.0407 per item (transit)
125,001–158,500	0.0392 per item (transit)
158,501–191,500	0.0372 per item (transit)
191,501–over	0.0342 per item (transit)
Deposit Items Encoded (West)	Pricing varies—tiered by monthly volume
For volumes of:	
1–25,000	0.0413 per item
25,001–58,500	0.0409 per item
58,501–91,500	0.0405 per item
91,501–125,000	0.0401 per item
125,001–158,500	0.0388 per item
158,501–191,500	0.0383 per item
191,501–over	0.0378 per item
Deposit Items Encoded (East)	Pricing varies—tiered by monthly volume
For volumes of:	
1–25,000	0.0367 per item
25,001–58,500	0.0362 per item
58,501–91,500	0.0357 per item
91,501–125,000	0.0352 per item
125,001–158,500	0.0337 per item
158,501–191,500	0.0327 per item
191,501–over	0.0321 per item
Deposit Items Returned	18.5000 per item
Deposit Items Photocopied	5.0000 per photocopy
DPS Photocopies—Subpoena	21.0000 per hour of processing time
plus	0.3000 per photocopy
Deposit Items Rejected (applicable to pre-encoded deposits only)	0.2500 per rejected item
Canadian Item Processing	5.5000 per item
All Foreign Collection Charges	Pass-through (Includes Foreign Collection Fees, Bought Foreign Collection Fees, Foreign Bank Processing Charges, and Foreign Check Courier Charges)
Adjustments on DPS Deposits (applicable to pre-encoded deposits only)	3.00 per adjustment
Foreign Return Check Fee	35.0000 per item

DPS Transportation (West)	10.5000 per pickup
DPS Transportation (East)	10.5000 per pickup
Return Check Courier Service	150.0000 per month
DEPOSITORY ACCOUNT SERVICES	
On—Us Returns Deposited:	
Qualified Returns	$1.2500 per item
Raw Returns	4.7500 per item
Mail Deposits	6.0000 per deposit
Bond Collection:	
Bearer	42.0000 per bond
Registered	52.0000 per bond
Bond Coupon Collection	8.5000 per envelope
Bond Coupon Returns	33.0000 per coupon
Deposit Transfer Vouchers	6.0000 per item
ELECTRONIC FUNDS TRANSFERS	
Incoming Wire Transfers	$6.3000 per transfer
Outgoing Wire Transfers (LINK)	7.0000 per transfer
Outgoing Wire Transfers (Manual)	11.0000 per transfer
Late Outgoing Wire Surcharge	10.0000 per transfer
Fax of Wire Transfer Advice	3.9500 per transfer
Internal Book Transfers (LINK)	No Charge
Internal Book Transfers (Manual)	1.2500 per transfer
Foreign Wire Surcharge	35.0000 per transfer
Foreign Wire Tracers	5.000 per transfer
Service Message Requests	2.000 per transfer
Mortgage Participation Service Fee	3.2000 per transfer
Expected Wires Not Received	Penalty Assessed [1]*
AUTOMATED CLEARING HOUSE	
ACH Transaction Settlement (CR/DR)	$0.3100 per transaction
ACH Cleared Through FHLB (CR/DR)	0.4000 per transaction
ACH Origination Items (CR/DR)	0.2200 per item
ACH Origination Record Set-Up	1.7500 per record
ACH Origination Items Returned	6.0000 per returned item
ACH Returns/NOCs—Facsimile	2.7500 per transaction
ACH Returns/NOCs—Telephone	4.5000 per transaction
ACH/FRB Priced Service Charges	0.3100 per transaction
FEDERAL RESERVE SETTLEMENT	
FRB Statement Transaction (CR/DR)	$0.6200 per transaction
Reserve Requirement Pass-Thru	33.0000 per month (active)
Correspondent Transaction (DR)	0.6200 per transaction
Direct Send Settlement	155.0000 per month
FRB Inclearing Settlement	155.0000 per month
FRB Coin & Currency Settlement	60.0000 per month
DEMAND DEPOSIT SERVICES	
Clearing Items Processed	$0.1650 per item
Clearing Items Fine Sorted (for return with Bank statements)	0.0900 per item
Reconcilement Copies—Manual	0.3500 per copy
Reconcilement Copies—MagTape	0.0600 per copy
Reconcilement MagTape Processing	Pass-through
Reconcilement Copies—Voided	0.1000 per copy
Check Photocopies—Mail	4.2500 per photocopy
Check Photocopies—Telephone/Fax	5.0000 per photocopy
Check Photocopies—Subpoena	1.0000 per photocopy
Stop Payment Orders	19.0000 per item
Stop Payment Cancellations	9.5000 per cancelled item
FRB Return Items Processed	0.6000 per item
FRB Return Items Qualified	0.4000 per item
FRB Return Items Over $2,500	6.2500 per item
Collections & Forgeries	19.0000 per item
Check Imprinting	Pass-through
Request for Fax/Photocopy	5.2500 per document/page
CHECK PROCESSING (INCLEARING)	
Checks Processed	Pricing varies—tiered by monthly volume
for volumes of:	
1—25,000	0.0479 per item
25,001—58,500	0.0454 per item
58,501—91,500	0.0427 per item
91,501—125,000	0.0401 per item
125,001—158,500	0.0372 per item
158,501—191,500	0.0346 per item
191,501—350,000	0.0308 per item
350,001—500,000	0.0282 per item

500,001—over	0.0257 per item

FULL BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks	Pricing varies—tiered by monthly volume
for volumes of:	
1—25,000	0.0630 per item
25,001—58,500	0.0620 per item
58,501—91,500	0.0600 per item
91,501—125,000	0.0585 per item
125,001—158,500	0.0570 per item
158,501—191,500	0.0555 per item
191,501—350,000	0.0535 per item
350,001—500,000	0.0495 per item
500,001—over	0.0465 per item
Truncated Checks	Pricing varies—tiered by monthly volume
for volumes of:	
1—25,000	0.0530 per item
25,001—58,500	0.0520 per item
58,501—91,500	0.0500 per item
91,501—125,000	0.0485 per item
125,001—158,500	0.0470 per item
158,501—191,500	0.0455 per item
191,501—350,000	0.0435 per item
350,001—500,000	0.0395 per item
500,001—over	0.0365 per item

MODIFIED BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks	Pricing varies—tiered by monthly volume
for volumes of:	
1—25,000	0.0530 per item
25,001—58,500	0.0520 per item
58,501—91,500	0.0500 per item
91,501—125,000	0.0485 per item
125,001—158,500	0.0470 per item
158,501–191,500	0.0455 per item
191,501–350,000	0.0435 per item
350,001–500,000	0.0395 per item
500,001–over	0.0365 per item
Truncated Checks	Pricing varies—tiered by monthly volume
for volumes of:	
1–25,000	0.0430 per item
25,001–58,500	0.0420 per item
58,501–91,500	0.0400 per item
91,501–125,000	0.0385 per item
125,001–158,500	0.0370 per item
158,501–191,500	0.0355 per item
191,501–350,000	0.0335 per item
350,001–500,000	0.0295 per item
500,001–over	0.0265 per item

IMAGE SERVICES—PROOF OF DEPOSIT (POD) SERVICE

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Relationship Officer at (800) 288–3400 for further information.

CHECK PROCESSING (ASSOCIATED SERVICES)

Unidentified Items Processed	2.0500 per item
Over-The-Counter Items	0.1975 per item
OTC Item Transportation	12.5000 per month
Special Cycle Sorting	0.0250 per item
Mid-Cycle Statement (Purged)	0.6000 per item (Min $3.00)
Mid-Cycle Stmt. (Non-Purged)	3.0000 per statement
Statement Printing	0.0300 per page
Statement Processing:	
Statements using Generic Envelopes	0.0700 per envelope
Statements using Custom Envelopes	0.1125 per envelope
Statements using Large Envelopes	0.7000 per envelope
Envelope Destruction Fee	0.0300 per envelope
Additional Stuffer Processing (one stuffer per statement free—applicable to all additional stuffers).	0.0300 per stuffer
Selective Stuffer Processing	0.1150 per statement
Daily Report Postage	Pass-through
Statement Postage	Pass-through
Standard Return Calls	1.5500 per item
Automated Return Calls	0.3000 per item
Return Calls via Link	0.8500 per item
Late Return Calls	7.0000 per item

Illegible BOFD Surcharge	5.2500 per item
Return Call Cancellations	6.0000 per item
FRB Return Items Processed	0.6000 per item
FRB Return Items Qualified	0.4000 per item
FRB Return Items Over $2,500	6.2500 per item
Suspect Item Processing	6.0000 per suspect item
Check Photocopies—Mail	4.2500 per photocopy
Check Photocopies—Telephone/Fax	5.0000 per photocopy
Check Photocopies—Subpoena	1.0000 per item
Signature Verification Copies	0.9500 per copy
Check Retrieval	1.9000 per item
MICRSort Option (Fixed Fee)	29.0000 per month
MICRSort Option (per item)	0.0340 per item
Collections & Forgeries	19.0000 per item
MCPJ Microfiche Service	0.0025 per item (Min. $25.00, Max. $150.00)
Transportation	Pass-through

COIN & CURRENCY SERVICE: WESTERN SERVICE AREA

Cash Orders	2.5500 per order, plus:
Currency Orders	0.3500 per $1,000 [2]
Coin Orders	2.9500 per box
Currency Deposits	1.5000 per $1,000 [2]
Coin Deposits	2.0000 per standard bag
Coin Deposits (Non-Standard)	3.0000 per non-standard bag
Coin Deposits (Unsorted)	9.0000 per mixed bag
Food Stamp Deposits	2.0000 per $1,000 [2]
Late Order Surcharge	12.5000 per order
Emergency Order Processing Fee	25.0000 per order
Large Cash Shipment Surcharge	6.0000 per shipment [3]
Coin Shipment Surcharge	0.3000 per excess bag [4]
C&C Transportation (Zone W1)	20.5000 per stop
C&C Transportation (Zone W2)	33.5000 per stop
C&C Transportation (Zone W3)	47.0000 per stop
C&C Transportation (Zone W4)	Negotiable [5]

COIN & CURRENCY SERVICE: EASTERN SERVICE AREA

Cash Orders	2.5500 per order, plus:
Currency Orders	0.3500 per $1,000 [2]
Coin Orders	3.1000 per box
Currency Deposits	1.5000 per $1,000 [2]
Coin Deposits	2.0000 per standard bag
Coin Deposits (Non-Standard)	3.0000 per non-standard bag
Coin Deposits (Unsorted)	9.0000 per mixed bag
Food Stamp Deposits	2.0000 per $1,000 [2]
Late Order Surcharge	12.5000 per order
Emergency Order Processing Fee	25.0000 per order
Large Cash Shipment Surcharge	6.0000 per shipment [3]
Coin Shipment Surcharge	0.3000 per excess bag [4]
C&C Transportation (Zone E1)	30.0000 per stop
C&C Transportation (Zone E2)	42.0000 per stop
C&C Transportation (Zone E3)	65.0000 per stop
C&C Transportation (Zone E4)	Negotiable [4]

ACCOUNT MAINTENANCE

Demand Deposit Accounts	23.0000 per month, per account
Cut-Off Statements	15.0000 per statement
Telephone Inquiry	2.5000 per telephone call
Paper Advice of Transactions(DTS)	37.5000 per account, per month
Daily Transaction Data via LINK	No Charge

MONTHLY MINIMUM CHARGES

The Bank reserves the right to impose a monthly minimum charge for its services. The standard minimum will be $2,500 per month, applied against Check Processing, Deposit Processing, and/or Proof of Deposit Services. Pass-through items, such as postage and transportation, do not apply.

ACCOUNT OVERDRAFT PENALTY

Greater of $75.00 per day and the daily interest on the amount of the overdraft (Rate used for calculation equal to the highest posted advance rate plus 3.0%)

REQUESTS FOR PROGRAMMING CHANGES

Programming support for new services, enhancements to existing service levels, or servicer conversions requiring at least one hour of programmer time and/or equivalent FHLB expenses will be charged at a rate of $100.00 per hour, plus expenses.

ATTENTION: CUSTOMERS RECEIVING TRANSPORTATION CHANGES UNDER ANY SERVICE

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service. Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

[1] Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.
[2] Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.
[3] This surcharge will apply to each cash shipments valued at $250,000 and over.
[4] A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.
[5] Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

District 4.—Federal Home Loan Bank of Atlanta (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (2001 NOW/DDA Services)

Fee Schedules

Checking Account Processing—
Effective February 1, 2000

I. CHECKING ACCOUNT SERVICE TRANSACTION CHARGES

Monthly volume	Safe-keeping	Turn-around (daily or cycled)	Complete	Full service image [1]		Limited service image	
	Per item	Per item	Per item	Per item	Per statement	Per item	Per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100–and up	.030	.0385	.0745	.06	.40	.02	.40

Minimum processing fee of 40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.
[1] Image Monthly Maintenance Fee of 500.00 for 0–32% of accounts; 300.00 for 33–49% of accounts; and 200.00 for 50%+ will be assessed for Image Statements.

II. ANCILLARY SERVICE FEES

Large Dollar Signature Verification	0.75
Over-the-counters and Microfilm	0.45
Return Items	2.40
Photocopies [1] and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only (per month)	100.00
+Journal Entries (each)	3.00
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
High Dollar Return Notification	N/C
Debit Entries	N/C

II. ANCILLARY SERVICE FEES—Continued

Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)[2]	N/C
Statement Stuffing Savings (Non DDA Accounts)	0.20

[1] Photocopy request of 50 or more are charged at an hourly rate of 15.00.
[2] Each additional (over 2) will be charged at .02 per statement.

b. Demand Deposits Accounts/ACH

ITEM PROCESSING SERVICE FEES—CASH MANAGEMENT SERVICE

Demand deposit clearings will have the following service charges:	
Stop payments	6.00 per stop
Photocopies	2.50 per copy
Collection/Return/Exception	5.00
Daily Statement	2.00
Maintenance	30.00 per month
Debit Entries	N/C
Credit Entries	N/C
ACH Fees:	
Tape transmission	$ 8.50 per tape
or originations	.045 per item
NACHA, MPX	Actual Federal Reserve charges
ACH entries clearing through our R&T number	.25 per item
Settlement only	65.00 per month
ACH returns/NOC	2.50 per item

Collected balances will earn interest at CMS daily-posted rate.
Prices effective April 1, 1993.

c. Deposit Services

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Pre-encoded Items:	
City	$0.045 per item
RCPC	.055 per item
Other Districts	.09 per item
Unencoded	.15 per item
Food Stamp	.14 per item
Photocopies*	2.50 per copy
Adjustments on pre-encoded work	2.75 per error
E Z Clear	.14 per item
Coupons	8.25 per envelope
Collections	6.00 per item
Cash Letter	2.00 per cash letter
Deposit Adjustments	.30 per adjustment
Debit Entries	N/C
Credit Entries	N/C
Microfilming	N/C
Mortgage Remittance (Basic Service)	.35
Settlement only	100.00 per month
+Journal Entries	3.00 each
Courier:	
Indianapolis (city):	8.25 per location, per day, per pickup
Outside Indianapolis:	prices vary per location

N/C—No Charge.

District 7.—Federal Home Loan Bank of Chicago (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 8.—Federal Home Loan Bank of Des Moines (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 9.—Federal Home Loan Bank of Dallas (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 10.—Federal Home Loan Bank of Topeka (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 11.—Federal Home Loan Bank of San Francisco (2001 NOW/DDA services) (Does not provide item processing services for third party accounts)
District 12.—Federal Home Loan Bank of Seattle (2001 NOW/DDA Services) (Does not provide item processing services for third party accounts)

Dated: March 20, 2001.

By the Federal Housing Finance Board

James L. Bothwell,

Managing Director.

[FR Doc. 01–7336 Filed 3–23–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 9, 2001.

A. **Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ann Manning, Minneapolis, Minnesota; Elizabeth Edwards Manning, Bettendorf, Iowa; Albert Manning and Kim Manning, both of Holt, Michigan; David Manning and Janet Manning, both of West Des Moines, Iowa; John Manning, Lynnette Manning, George Manning, Ona Manning, Matthew Manning and Judith Manning, all of Keosauqua, Iowa; to retain ownership of Van Buren Bancorporation, Keosauqua, Iowa, and thereby indirectly retain additional voting shares of Community First Bank, Keosauqua, Iowa.

Board of Governors of the Federal Reserve System, March 20, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–7332 Filed 3–23–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee

AGENCY: Office of Public Health and Science, Office for Human Research Protections, DHHS.

ACTION: Notice of second meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on April 9–10, 2001. The meeting will convene from 8:30 a.m. to its recess at 5:30 p.m. on April 9 and resume at 8:30 a.m. to 5 p.m. EST on April 10.

ADDRESSES: Bethesda Marriott—Pooks Hill Road, Bethesda, Maryland 20814, (301) 897–9400.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, 6100 Executive Boulevard, Room 310B (MSC 7507), Rockville, Maryland 20892–7507, (301) 496–7005. The electronic mail address is: kg123a@nih.gov.

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000 to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topic pertaining to or associated with the protection of human research subjects.

The draft meeting agenda for the second meeting of this committee is below. Updates to this agenda will be posted on the NHRPAC website at: http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm.

Draft Agenda

Monday April 9, 2001

8:30 a.m.–9:15 a.m. Welcome: (45 minutes)
- Introduction of New Members (brief comments about yourself; areas of particular concern) (5 minutes each)
- Mary Faith Marshall, Ph.D., Chairperson NHRPAC
- Office for Human Research Protection Updates (10 minutes)
- Greg Koski, Ph.D., M.D., Director of OHRP, Executive Secretary, NHRPAC, Chairman, HSRS
- Clarification of NHRPAC Roles (10 minutes)
- Mary Faith Marshall, Ph.D.

9:15 a.m.–9:30 a.m. The Department's Commitment to Protection of Human Subjects (15 minutes)
- The Honorable David Satcher, M.D., Ph.D., Surgeon General (Invited)

9:30 a.m.–11 a.m. Update: Financial Relationships (1 hour, 30 minutes)
- Mark Barnes, J.D., Chair, Working Group
- Stuart L. Nightingale, M.D., Senior Medical Advisor to the Assistant Secretary for Planning & Evaluation

10:30 a.m.–10:45 a.m. Break (15 minutes)

11 a.m.–11:45 a.m. Update: Declaration of Helsinki (45 minutes)
- Greg Koski, Ph.D., M.D.
- Stuart L. Nightingale, M.D.

11:45 a.m.–12:15 p.m. Public Comment (30 minutes)

12:15 p.m.–1:30 p.m. Lunch—On your own

1:30 p.m.–4:30 p.m. Genetics

1:30 p.m.–2:15 p.m. Genetic Research: An overview (45 minutes)
- Francis Collins, M.D., Ph.D., director, National Human Genome Research Institute

2:15 p.m.–4:30 p.m. Panel Discussion
- Moderator, Francis Collins, M.D., Ph.D.
- Family Members:
- Should Family Members of Survey Subjects, Themselves become Subjects of a Protocol—if so, Must Informed Consent be Obtained for Investigator to Retain Private Information on these Individuals?

2:15 p.m.–3:15 p.m. Guest Panel: (1 hour)
- Jeff Botkin, M.D., M.P.H., Department of Pediatrics, The University of Utah Medical Center (15 minutes)
- Terry Arledge, Ph.D., GalaxoSmithKline (15 minutes)
- Sharon Terry, Genetic Alliance (15 minutes)
- Terry Seargent (15 minutes)

3:15 p.m.–3:30 p.m. Break (15 minutes)

3:30 p.m.–4:30 p.m. Discussion (45 minutes)

4:30 p.m.–5:15 p.m. Public Comment (1 hour)

5:15 p.m.–5:30 p.m. Closing Comments/ Adjourn (15 minutes)

Tuesday, April 10, 2001

8:30 a.m.–8:45 a.m. Brief Recap of Day One (15 minutes)
- Questions/Clarifications
- Mary Faith Marshall, Ph.D.

8:45 a.m.–9:00 a.m. The National Institutes of Health and Human Subject Protections (15 minutes)
- Ruth Kirschstein, M.D., Acting Director, National Institutes of Health

9:00 a.m.–12:00 p.m. Children (3 hours)
9:00 a.m.–9:45 a.m. Discussion of Current Definitions and their Interpretation (45 minutes)
NHRPAC Committee
9:45 a.m.–10:15 a.m. Children's Workgroup (30 minutes)
Alan Fleischman, M.D., Senior Vice President, NY Academy of Medicine, Clinical Professor of Pediatrics and Clinical Professor of Epidemiology & Social Medicine, Albert Einstein College, New York
10:15 a.m.–10:30 a.m. Break (15 minutes)
10:30 a.m.–11:45 a.m. Committee Discussion (1 hour, 15 minutes)
11:45 a.m.–12:00 p.m. The National Science Foundation and Human Subject Protections (15 minutes)
Rita Colwell, Ph.D., Director, National Science Foundation
12:00 p.m.–1:30 p.m. Lunch—on your own (1 hour, 30 minutes)
1:30 p.m.–3:00 p.m. Update: Social Science (1 hour, 30 minutes)
Felice Levine, Ph.D., Executive Officer, American Sociological Association (30 minutes)
Jeff Cohen, Ph.D., Director, Education, OHRP
Discussion (1 hour)
3:00 p.m.–3:15 p.m. Break (15 minutes)
3:15 p.m.–4:15 p.m. Public Comment (1 hour)
4:15 p.m.–5:00 p.m. Meeting Recap (45 minutes)
Review Recommendations:
Financial Relationships
Declaration of Helsinki
Genetics
Secondary Subjects
Children
Social Science
Mary Faith Marshall, Ph.D.
5:00 p.m. Thank You—Adjourn

Dated: March 20, 2001.

Greg Koski,

Director, Office for Human Research Protections.

[FR Doc. 01–7443 Filed 3–23–01; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 01041]

Exposure to Tremolite Asbestos in Vermiculite Ore Site-Specific Health Activities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites around the United States that received and/or processed ore from the mine in Libby, Montana.

This program addresses the "Healthy People 2010" focus area of Environmental Health. The purpose of the program is to assist public health agencies in conducting site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore.

B. Eligible Applicants

Assistance will be provided only to public health agencies of States or their bona fide agents or instrumentalities. State organizations, including State universities, must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2001 to fund approximately 10 awards. It is expected that the average award will range from a maximum of $10,000 for the conduct of health statistics reviews to a maximum of $500,000 for epidemiologic investigations. It is expected that the awards will begin on or about either July 1, 2001 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Funds may not be used to purchase equipment.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1. Recipient Activities

a. For health statistics reviews: Analyze existing health outcome data of select asbestos-related diseases. Mortality data will be the most readily available data for asbestos-related diseases such as mesothelioma, lung cancer, and asbestosis, although cancer registry data should be utilized where available.

b. For epidemiologic investigations: Develop a protocol and conduct the recommended investigation. This protocol will undergo scientific peer review as required by ATSDR.

c. Provide proof by citing a State code or regulation or other State pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

d. Develop a mechanism for ongoing interaction with, and education of affected community.

2. ATSDR Activities

a. For the health statistics review: Make available to states both technical assistance and a standard protocol to use to analyze existing health outcome data of select asbestos-related diseases.

b. For epidemiologic investigations: Provide consultation and assist in monitoring the data; participate if requested in the study analysis and collaborate, if requested, in interpreting the study findings.

c. Conduct technical and peer review.

E. Application Content

In a narrative form, the application should include a discussion of areas under the "Evaluation Criteria" section of this announcement as they relate to the proposed program. These criteria serve as the basis for evaluating the application; therefore, omissions or incomplete information may affect the rating of the application. This program does not require in-kind support or matching funds, however, the applicant should describe any in-kind support in the application.

The narrative should be no more than 30 pages, double-spaced, printed on one-side, with 1″ margins, and

unreduced fonts (font size 12 point) on 8½" by 11" paper. The pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two copies of the application must be submitted unstapled and unbound.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/*. . .

Forms, or in the application kit. The proposed timetable for receiving new applications and making awards is shown below:

Submission deadlines	Review dates	Award dates
May 1, 2001	June 1, 2001	July 1, 2001.
August 1, 2001	September 1, 2001	September 30, 2001.

On or before above dates, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

1. Proposed Program (50 Percent)

The extent to which the application addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the Background (attachment II) sections of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (c) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (d) the proposed community involvement strategy; (e) the proposed method to disseminate the results to State and local public health officials, community residents, and other concerned individuals and organizations; and (f) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. Program Personnel (30 Percent)

The extent to which the application has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts (20 Percent)

The extent to which the application has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; (c) the suitability of facilities and (d) equipment available or to be purchased for the project.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

5. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC and ATSDR with original plus two copies of—

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104 (i)(1)(E), (7), (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604 (i)(1)(E)(6),(7),(14), and (15)]. The Catalog of Federal Domestic Assistance number is 93.161.

J. Where To Obtain Additional Information

A complete copy of the announcement may be downloaded from CDC's home page on the Internet at: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements." To receive

additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2722, E-mail address nag9@cdc.gov.

For program technical assistance, contact:

Sharon Campolucci, RN, MSN, Deputy Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 2300, Atlanta, GA 30305, Telephone (404) 639–6200, E-mail Address *ssc1@cdc.gov.*

or

Maggie Warren, Funding Resource Specialist, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., Mail Stop E–31, Atlanta, GA 30333, Telephone (404) 639–5114, E-mail Address *mcs9@cdc.gov.*

Dated: March 20, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–7347 Filed 3–23–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Preliminary Finding of No Significant Impact

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Final Finding of No Significant Impact.

SUMMARY: The Administration for Children and Families published a Notice in the **Federal Register** on November 9, 2000, (65 FR 67377) notifying interested parties that a Draft Programmatic Environmental Assessment issued by ACF was available for review and comment. The document assessed the environmental impacts of activities undertaken by Head Start and Early Head Start grantees when purchasing, renovating or constructing child care facilities with grant funds. This document was prepared in accordance with the National Environmental Policy Act of 1969, as amended, the regulations of the Council on Environmental Quality (40 CFR 1500–1508), and the Revised General Administration Manual, HHS Part 30, Environmental Protection. ACF received no comments on the Draft Programmatic Environmental Assessment. ACF reviewed the conclusion of the Environmental Assessment (EA), and agreed with its findings.

In the **Federal Register** on January 25, 2001, (66 FR 7768) ACF invited public comment on a preliminary determination that regulates governing the purchase, construction and renovation of Head Start and Early Head Start child care centers. They will not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement will not be necessary. ACF received no comments on the preliminary determination pertinent to the findings of the Environmental Assessment. ACF is therefore issuing a Final Finding of No Significant Impact by finding that regulations governing the purchase, construction and renovation of Head Start and Early Head Start child care centers will not have a significant impact on the quality of the human environment. ACF finds that the preparation of an environmental impact statement will not be necessary.

DATES: This finding is effective on March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION: Head Start and Early Head Start are authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily from age three to the age of compulsory school attendance, and their families.

Early Head Start programs enroll children from birth to three years old and pregnant women. To help enrolled children achieve their full potential, Head Start and Early Head Start programs provide comprehensive health, nutritional, educational, social and educational services. ACF has proposed amendments to existing Head Start regulations (45 CFR part 1309) to establish procedures for grantees to apply to use grant funds to cover the cost of constructing and making major renovations to Head Start and Early Head Start facilities and the steps necessary to protect the Federal interest in those facilities. The regulations at 45 CFR part 1309 currently establish procedures for grantees to request to use Head Start and Early Head Start grant funds to purchase facilities and to protect the Federal interest in those facilities. The authority for use of Head Start and Early Head Start grant funds to purchase, construct or undertake major renovations is found in Section 644 (f) and (g) of the Head Start Act.

ACF prepared and published for comment a Draft Environmental Assessment on November 9, 2000, (65 FR 67377). The alternatives assessed included the Proposed Action, which would include the full range of authorized activities including facility purchase, new construction and major renovation. The Alternative Action to the Proposed Action assessed a more restrictive alternative in which only minor construction and renovations would be conducted. The No Action Alternative under which only incidental alterations and renovations would be conducted was also assessed. The assessment considered the Proposed Action, Alternative Action and the No Action Alternative and the effects of each on water quality, air quality, noise, land use, transportation, waste management, human health and safety, soils, vegetation and wildlife, wetlands, cultural resources, socioeconomic factors, environmental justice, recreation, aesthetics, public services and utilities.

ACF has chosen to implement the Proposed Action. Environmental resources may be affected by implementing the Proposed Action and these impacts are analyzed in the Programmatic Environmental Assessment. Given the nationwide nature of this Assessment and the variety of possible environmental conditions, it was not deemed prudent to define the affected environment for all possible sites. Instead, the Assessment identifies circumstances, which may result in significant impacts, which must be avoided or mitigated when costs of purchasing, constructing or making major renovations to a Head Start facility are met with grant funds. In the course of implementing the Proposed Action, there will be some impacts to environmental resources. Most of these impacts, however, are expected to be minimal, largely due to mitigating measures during the site

selection, construction, operation and decommissioning phases. In many cases, compliance with State, local and tribal regulations will lead to the avoidance of significant impacts, simply by requiring mitigation or by leading the grantee to select a different site.

The Programmatic Environmental Assessment described the following possible significant impacts and means for mitigating them.

(a) *Water Quality*—An impact would be considered significant if effluent or pollutant emissions result in exposure of people, wildlife, or vegetation to surface or ground waters that do not meet the standards established under the Clean Water Act, or interfere with State water quality standards. Significant impacts on the environment from operation, construction or renovation will be mitigated by grantees adhering to all State, local and tribal regulations regarding zoning, planning and construction.

(b) *Air Quality*—An impact would be considered significant if pollutant emissions result in exposure of people, wildlife, or vegetation to ambient air that does not meet the standards established under the Clean Air Act, or interfere with state ambient air quality standards. Significant impacts on the environment will be mitigated by grantees adhering to all State, local and tribal regulations regarding construction and operational emissions.

(c) *Noise*—An impact would be considered significant if it resulted in exposure of sensitive receptors to a Day-Night Level (DNL) of greater than 65 A-weighted decibels (dBA). A significant impact on the environment from operation, renovation or construction sites can be mitigated by maintaining normal daylight hours for construction and normal operation. Significant impacts on the environment will be mitigated by grantees adhering to all State, local and tribal noise regulations.

(d) *Land Use*—An impact would be considered significant if the proposed action conflicted with any Federal, regional, State, or local land use plans. If land use patterns are changed in the immediate project area due to the proposed action, the impact would also be considered significant. Significant impacts can be mitigated by requiring grantees to comply with State, local and tribal land use plans and ordinances.

(e) *Transportation*—An impact would be considered significant if there is a traffic increase, which is predicted to upset the normal flow of traffic, create the need for major road repair as a result of the action, or generate traffic levels requiring the expansion of existing roadways or facilities. Significant impacts can be mitigated by using flaggers on busy roads during construction phases. Transit can be subsidized if a facility is on a major road to discourage automobile use.

(f) *Waste Management*—An impact would be considered significant if there is an increase in the generation of solid or hazardous waste beyond the present facility capacity or new facility capacity to safely handle and dispose of that waste. Significant impacts will be mitigated by grantees adhering to State, local and tribal regulations and ordinances for waste management.

(g) *Human Health and Safety*—An impact would be considered significant if there is inadequate protection against serious injury to any worker or user during construction, maintenance, or operation of the project. Exposure to hazardous compounds or fumes at concentrations above health-based levels would be a significant impact. Significant impacts can be mitigated by making use of Head Start provided design guides, and by following State, local and tribal licensing requirements. Grantees will avoid new construction at sites with a history of hazardous material use or storage or sites near pollution sources. As required under 45 CFR 1304.22, all Head Start grantees must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained. In addition, all grantees are required to post emergency evacuation routes and other procedures for emergencies, which are practiced regularly.

(h) *Soils*—An action would cause a significant impact if soil erosion produced gulling, damage to vegetation, or a sustained increase in sedimentation in streams. An action would also constitute a significant impact if the action causes ground fracturing, folding, subsistence or instability. Impacts associated with soil contamination would be significant if the affected area was no longer able to support its current function or vegetative cover. Significant impacts will be mitigated by grantees adhering to all applicable State, local and tribal regulations.

(i) *Vegetation and Wildlife*—An action would cause a significant impact if the degradation or loss of habitat sufficient to cause indigenous populations to leave or avoid the area occurred. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites which do not raise substantial biological concerns.

(j) *Wetlands*—An action would cause a significant impact if the soil structure, or water related hydrologic features or the vegetation of more than 3 acre (1/10 ha) of a wetland would be altered, or a flood plain area is altered enough to present a reasonable flood danger to the area, or causes the degradation or loss of habitat for populations indigenous to the flood plain area, or prohibits farming activities. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites other than wetlands.

(k) *Cultural Resources*—An impact would be significant if an effect on a historic property occurs that may diminish the integrity of the historic properties location, design, setting, workmanship, feeling or association as set forth in 36 CFR 800.9. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites which are not historic sites.

(l) *Socioeconomics*—A change of more than 2 percent of the previously projected level of local employment, population, or gross domestic product would be considered a significant impact. Also, if school populations decrease by more than 2 percent, revenues decrease by more than 2 percent and if the vacancy rate increased by more than 2 percent, that would constitute a significant impact. Mitigation of significant impacts are not expected to be likely as the impacts in this area are considered to be positive.

(m) *Environmental Justice*—A significant impact would occur if a disproportionate number of minority and/or low income populations were adversely affected by the project. Mitigation of significant impacts are not expected to be necessary because facilities are not expected to have significant adverse environmental impacts.

(n) *Recreation*—Significant impacts on recreation facilities and resources would occur when the project conflicts with local, State or tribal recreation plans for the community, or a physical invasion by the project prevents current and/or future recreational use of adjacent properties. Significant impacts will be mitigated by including recreation sites in plans for child care centers to reduce reliance on public resources.

(o) *Aesthetics*—A significant impact would be the addition, into a predominantly natural setting, of incongruous human-made elements such as structures, noise, trash or pollutants, to the extent that they degrade the enjoyment of the setting for a majority of visitors or residents. Significant impacts will be mitigated by grantees adhering to local or tribal ordinances and regulations on building appearance.

(p) *Public Services*—An impact would be considered significant if the proposed project inhibited the public services by preventing fire, police, emergency or social services from responding to calls in a timely way or if the project would impose excessive demands on public services.

Significant impacts will be mitigated by grantees using public services in appropriate and responsible ways and by complying with State, local or tribal licensing regulations to reduce dangers of fires or other emergencies.

(q) *Utilities*—Significant impacts would occur where the proposed project would inhibit the use of such services by any other property owner, or if the project created an unreasonable demand on utility companies. Significant impacts will be mitigated by incorporating energy efficient features in building design.

(r) *Cumulative Effects*—Considered on a nationwide scale, activities related to the purchase, construction and major renovation of Head Start and Early Head Start facilities are expected to have a negligible cumulative impact.

ACF does not contemplate approving the purchase, construction or major renovation of Head Start or Early Head Start facilities located, or to be located, on wetlands or flood plains, at sites where the project would affect significantly sensitive natural habitats, or at sites where the project would significantly affect historic properties. This policy reflects concern not only with the adverse effects on the environment that selection of such sites would have, but also in recognition of the prohibitive costs, which would likely be incurred in mitigating significant impacts at those sites.

Dated: March 19, 2001.

Diann Dawson,

Acting Principal Deputy Assistant Secretary, Administration for Children and Families.

[FR Doc. 01–7338 Filed 3–23–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10021]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Collection of data on Hospital Outpatient Encounters from Medicare + Choice Programs; *Form No.:* HCFA–10021 (OMB# 0938–NEW); *Use:* HCFA requires hospital outpatient encounter data from Medicare+Choice organizations to develop and implement a risk adjustment payment methodology as required by the Balance Budget Act of 1997; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 12,600; *Total Annual Hours:* 60,375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA 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: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: March 13, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–7327 Filed 3–23–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–52]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the 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: Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–.2171;

Form No.: HCFA–R–52 (OMB# 0938–0386);

Use: This information is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities.;

Frequency: Annually;

Affected Public: Business or other for-profit, and Federal Government;

Number of Respondents: 3,940;

Total Annual Responses: 3,940;

Total Annual Hours: 143,721.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address and phone number, 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 designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 30, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–7328 Filed 3–23–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–228]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the 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: Revision of a currently approved collection; *Title of Information Collection:* Managed Care Adjusted Community Rate (ACR) Proposal and Supporting Regulations in 42 CFR 422.300–422.312; *Form No.:* HCFA–R–0228 (OMB# 0938–0742); *Use:* This collection effort will be used to price the M+C plan offered to Medicare beneficiaries by an M+C organization. Organizations submitting the Adjusted Community Rate form would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization. These current M+C organization contractors will be required to submit this form no later than May 1, 1999 for the calendar year 2000.; *Frequency:* Annually; *Affected Public:* Businesses or other for profit, Not-for-profit institutions.; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours Requested:* 40,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address and phone number, 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 designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 30, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–7329 Filed 3–23–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: 2002 National Household Survey on Drug Abuse—(OMB Number 0930–0110, Revision)—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2002 NHSDA, the modular components of the NHSDA questionnaire will remain essentially unchanged except for minor modifications to wording. As with all NHSDA surveys conducted since 1999, the sample size of the survey for 2002 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 85,400 hours as shown below:

	Number of respondents	Responses/ respondent	Average burden response (hrs.)	Total burden hours
Household Screening	202,500	1	0.083	16,808
NHSDA Interview	67,500	1	1.000	67,500
Screening Verification	6,176	1	0.067	414
Interview Verification	10,125	1	0.067	678
Total				85,400

Please send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Parklawn Building, 5600 Fishers Lane, Room 16–105, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: March 19, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–7348 Filed 3–23–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Paskenta Band of Nomlaki Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Paskenta Band of Nomlaki Indians Liquor Control Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Paskenta Indian trust lands, and is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on April 19, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Paskenta Band of Nomlaki Indians Liquor Control Ordinance No. 2000–419B, as authorized by Resolution No. 4–19–00, was duly adopted by the Paskenta Band Tribal Council on April 19, 2000. The Paskenta Band, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Paskenta Band of Nomlaki Indians.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 4–19–00, the Paskenta Band of Nomlaki Indians Liquor Control Ordinance No. 2000–419B was duly adopted by the Paskenta Band Tribal Council on April 19, 2000.

Dated: March 19, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

The Paskenta Band of Nomlaki Indians Liquor Control Ordinance No. 2000–419B reads as follows:

Liquor Control Ordinance 2000–419B

Article 1. Name. This statute shall be known as the Paskenta Liquor Control Ordinance.

Article 2. Authority. This statute is enacted pursuant to the Act of August 15, 1953, (Public Law 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and Article VI of the Constitution of the Tribe.

Article 3. Purpose. The purpose of this statute is to regulate and control the possession and sale of liquor on the Paskenta Nomlaki Indian Reservation, and to permit alcohol sales by tribally owned and operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Tribe. The enactment of a tribal statute governing liquor possession and sales on the Paskenta Nomlaki Indian Reservation will increase the ability of tribal government to control Reservation liquor distribution and possession, and will provide an important source of revenue for the continued operation and strengthening of the tribal government, the economic viability of tribal enterprises, and the delivery of tribal government services. This Liquor Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. § 1161, and with all applicable federal laws.

Article 4. Effective Date. This statute shall be effective as of the date of its publication in the **Federal Register**.

Article 5. Possession of Alcohol. The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Paskenta Nomlaki Indian Reservation; provided that such introduction or possession is in conformity with the laws of the State of California.

Article 6. Sales of Alcohol.

(a) The sale of alcoholic beverages by business enterprises owned by and subject to the control of the Tribe shall be lawful within the exterior boundaries of the Paskenta Nomlaki Indian Reservation; provided that such sales are in conformity with the laws of the State of California.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Tribe shall be lawful within the exterior boundaries of the Paskenta Nomlaki Indian Reservation; provided that such sales are in conformity with the laws of the State of California and with prior approval by the Tribe.

Article 7. Age Limits. The drinking age within the Paskenta Nomlaki Indian Reservation shall be the same as that of the State of California, which is currently 21 years. No person under the age 21 years shall purchase, possess or consume any alcoholic beverage. At such time, if any, as California business and Profession Code § 25658, which sets the drinking age for the State of California, is repealed or amended to raise or lower the drinking age within California, this Article shall automatically become null and void, and the Tribal Council shall be empowered to amend this Article to match the age limit imposed by state law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Article 8. Civil Penalties. The Tribe, through its Tribal Council and duly authorized security personnel, shall have the authority to enforce this statute by confiscating any liquor sold, possessed or introduced in violation hereof. The Tribal Council shall be empowered to sell such confiscated liquor for the benefit of the Tribe and to develop and approve such regulation as may become necessary for enforcement of this ordinance.

Article 9. Prior Inconsistent Enactments. Any prior tribal laws, resolutions, or statutes, which are inconsistent with this statute, are hereby repealed to the extent they are inconsistent with this statute.

Article 10. Sovereign Immunity. Nothing contained in this statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies from unconsented suit or action of any kind.

Article 11. Severability. If any provision of this statute is found by any agency or court of competent jurisdiction to be unenforceable, the remaining provisions shall be unaffected thereby.

Article 12. Amendment. This statute may be amended by majority vote of the Tribal Council of the Tribe at a duly

noticed Tribal Council meeting, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

[FR Doc. 01–7357 Filed 3–23–01; 8:45 am]
BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Sandia Liquor Sales Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Pueblo of Sandia Liquor Sales Ordinance. The Ordinance is intended to amend and supplement the Liquor Ordinance which was certified by the Secretary of the Interior and published in the **Federal Register** on March 13, 1958. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Pueblo of Sandia trust and restricted fee lands, and is in conformity with the laws of the State of New Mexico, where applicable and necessary. Although the Ordinance was adopted on October 28, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Pueblo of Sandia Liquor Sales Ordinance, Resolution No. 00–44, was duly adopted by the Sandia Pueblo Tribal Council on October 28, 2000. The Pueblo of Sandia, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Pueblo of Sandia.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 00–44, the Pueblo of Sandia Liquor Sales Ordinance was duly adopted by the Sandia Pueblo Tribal Council on October 28, 2000.

Dated: March 12, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

The Pueblo of Sandia Tribal Council Liquor Ordinance, Resolution No. 00–44, reads as follows:

Liquor Sales Ordinance of the Pueblo of Sandia

BE IT ORDAINED AND ENACTED by the Pueblo of Sandia as follows:

Section 1. Introduction

A. Title. The title of this ordinance shall be the Liquor Sales Ordinance of the Pueblo of Sandia.

B. Authority. This ordinance is being passed and enacted in accordance with the inherent governmental powers of the Pueblo of Sandia, a federally-recognized tribe of Indians, and in conformance with the laws of the State of New Mexico, as required by 18 U.S.C. Section 1161.

C. Purpose. The purpose of this ordinance is to regulate the sale of Intoxicating Beverages (as herein defined) within the exterior boundaries of the Pueblo of Sandia.

Section 2. Definitions

Enterprise means a Person, Individual(s) employed by the Pueblo, or business owned and/or operated by the Pueblo, engaged in, or desiring to engage in, the business of selling Intoxicating Beverages.

Governor means the Governor of the Pueblo of Sandia or his designee.

Individuals employed by the Pueblo means persons who are tribal employees.

Intoxicated Person means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.

Intoxicating Beverage includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer, and all fermented, spiritous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating, and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer, excluding any prescription or over-the-counter medicine, any product not fit for human consumption and wine used for sacramental purposes.

License means a license or authorization by the Tribal Council for a Permittee to sell Intoxicating Beverages at a designated location.

Licensed Establishment means a physical area of Pueblo of Sandia tribal land designated by the Pueblo of Sandia Tribal Council as a licensed establishment for the purpose of selling intoxicating beverages.

Minor means any person under the age of twenty-one (21) years.

Permit means a permit or license for an Enterprise to sell Intoxicating Beverages.

Permitted Server means any individual, whether or not a member of the Pueblo, who is an employee or owner of a Permittee and who is authorized to sell, serve, or dispense intoxicating beverages under such rules and regulations as the Pueblo may adopt. A Permitted Server may not be a minor.

Permittee means either: (1) The Pueblo, an Enterprise wholly owned by the Pueblo, or an Enterprise owned in major part and controlled by the Pueblo which is authorized by the Tribal Council to sell and serve intoxicating beverages in a licensed establishment; or (2) any other Enterprise which is licensed by the Tribal Council in accordance with this Ordinance and thereby authorized to sell and serve intoxicating beverages in a licensed establishment.

Person means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or business, government, Indian Tribe, or any agency, instrumentality, or subdivision thereof.

Pueblo means the Pueblo of Sandia, a federally-recognized tribe of Indians, located within the exterior boundaries of the State of New Mexico.

Tribal Council means the Pueblo of Sandia Tribal Council and will include its duly authorized delegees.

Section 3. General

The sale of Intoxicating Beverages shall be lawful within the exterior boundaries of the Pueblo of Sandia and on all other lands of the Pueblo over which the Pueblo has jurisdiction provided that such sale is made in conformance with the laws of the State of New Mexico, to the extent applicable, and is authorized by this Ordinance.

Section 4. Sales Allowed

A. Sales of Intoxicating Beverages on Pueblo lands are authorized only if the sale occurs in a Licensed Establishment and is made by a Permittee.

B. Sales of Intoxicating Beverages by a Permittee may be made only by a Permitted Seller.

C. No sale of Intoxicating Beverages shall be made to a person under the age of twenty-one (21).

Section 5. Permits

A. Permittees

1. An Enterprise owned or controlled by the Pueblo which is expressly authorized to sell and serve Intoxicating Beverages by the Tribal Council shall be deemed to be a Permittee without further application.

2. Any other Enterprise which seeks to sell and serve Intoxicating Beverages shall apply for a Permit on such form and pursuant to such rules and regulations as the Pueblo may adopt. The application shall be submitted to the Governor and the Tribal Council, shall be accompanied by the applicable fee, as established from time to time by the Pueblo, and must contain, among other matters, the following information:

(a) the name and address of the Enterprise and, if applicable, the state in which it was incorporated or organized, and a certified copy of its articles of incorporation or organization;

(b) the names and addresses of all officers of the Enterprise and of all Persons owning a five percent (5%) or greater interest in the Enterprise;

(c) a list of every liquor license or permit, by number and state or Indian tribe, in which the Enterprise or any predecessor-in-interest has, or within the past ten (10) years had, directly or indirectly owned or held any interest;

(d) for every Person identified in paragraph (b), two (2) complete sets of fingerprints and detail with respect to past criminal activity, including conviction for any felony, conviction for any misdemeanors, and conviction for a violation of any federal or state liquor control law at any time, except that traffic offenses need not be listed;

(e) detail as to whether the enterprise or any Person identified in paragraph (b) either (i) ever applied for a liquor license or permit from any governmental entity, which was denied, and the reasons for such denial, or (ii) held a liquor license or permit which was revoked, and the reasons for such revocation; and

(f) evidence of financial responsibility.

3. Permits shall be issued for a period not to exceed one (1) year, and may be renewable in the discretion of the Pueblo upon the submission of a properly completed renewal application, accompanied by the applicable license renewal fee, as established from time to time by the Pueblo.

B. Permitted Servers

1. Any individual, including individuals employed by the Pueblo, who seeks to become a Permitted Server, shall apply for a permit on such form and pursuant to such rules and regulations as the Pueblo may adopt. The application shall be submitted to the Governor and must contain, among other matters, the following information:

(a) the name and address of the applicant;

(b) a list of all jobs, businesses, and other employment for the immediately preceding five (5) years;

(c) a listing of all residences for the immediately preceding five (5) years, including street address, city, and state, and dates of residence at each different location;

(d) the information required under subsection A–2–(c), (d) and (e) above;

(e) evidence that the individual has taken the requisite alcohol server training program as may be required of individuals selling Intoxicating Beverages under the laws of the State of New Mexico, or agrees to take such course within thirty (30) days of his or her employment.

2. Server permits, unless sooner revoked, shall be issued for a period of up to five (5) years from the date that the Permitted Server has completed an alcohol server training program.

C. Fingerprint Procedures

1. The Pueblo may require two sets of fingerprints from any or all of the individuals identified in subsections 5.A and 5.B. above.

2. All applicants to become Permittees and any other individual required to submit fingerprints hereunder must consent that the fingerprints may be processed by local and national law enforcement agencies and all other available agencies. If the search, by virtue of the fingerprint submission, reveals any adverse information which was not shown on the application, the individual concerned will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

3. Any costs associated with supplying the complete sets of fingerprints and the investigation thereafter will be borne exclusively by the Permittee.

Section 6. Licensed Establishments

A. Sales and serving of Intoxicating Beverages may occur only in a Licensed Establishment.

B. Each Licensed Establishment shall be identified by a map showing its location and the perimeters of the land and building, together with a general description of the premises, which map and description shall be filed with the Pueblo. A parcel of land not containing a building, so long as the perimeters thereof are defined, may be a Licensed Establishment, including but not limited to areas within a golf course, including adjacent facilities utilized in connection with the golf course.

C. An Enterprise which is not owned or controlled by the Pueblo must apply to the Tribal Council for a License to operate a Licensed Establishment on such form and in such a manner as the Pueblo may prescribe. The premises upon which the Enterprise applies to operate shall not be deemed a Licensed Establishment unless and until such License is granted. Unless sooner terminated in accordance with this Ordinance, each License shall be for a maximum period of three (3) years.

D. An Enterprise which is owned or controlled by the Pueblo shall be deemed to have a Licensed Establishment upon filing the map and description required under subsection (b) pursuant to express authorization of the Tribal Council.

E. No Licensed Establishment shall be located closer than 500 feet from any church, school, or military installation. A Licensed Establishment will be specifically designated so as to permit sales by the package and/or by the drink.

Section 7. Permit and License Approvals and Denials

A. The granting, denial or renewal of a Permit or License shall be within the discretion of the Pueblo of Sandia Tribal Council.

B. The License for a Licensed Establishment or the permit for a Permittee or any Permitted Server may be terminated or revoked for cause. Cause shall include:

1. Violation of this Ordinance or the laws of the State of New Mexico;

2. Violation of any rules and regulations adopted by the Pueblo to implement this Ordinance;

3. Sale of Intoxicating Beverages outside a Licensed Establishment or in violation of its Permit or License;

4. Conviction of a Permitted Server, a Permittee, or of any individual described in subsection 5.A–2–(b) of a felony or of a misdemeanor involving a violation of any alcoholic beverage law;

5. Making a material misstatement in the application for a Permit; and

6. Allowing a nuisance, drug sales or rowdy behavior to occur within the Licensed Establishment.

C. Revocation of a Permit will occur only following an opportunity for a hearing before the Tribal Council or its authorized delegee. Decisions of the Tribal Council or its authorized delegee shall be final and not subject to further review.

D. No transfer or assignment of a Permit shall be made without the approval in writing of the Tribal Council.

E. Notwithstanding any other provision of this Ordinance, a Permit issued hereunder shall not be deemed a property right or vested right of any kind, nor shall the granting of any Permit give rise to a presumption or legal entitlement to the renewal of such Permit.

Section 8. Prohibited Sales and Practices

A. No Permittee or Permitted Server shall:

1. Sell, serve, or dispense Intoxicating Beverages to any person who is obviously intoxicated;

2. Award Intoxicating Beverages as prizes;

3. Sell Intoxicating Beverages at a drive-up or walk-up window;

4. Sell Intoxicating Beverages to a minor;

5. Knowingly sell Intoxicating Beverages to an adult purchasing such liquor on behalf of a minor or an Intoxicated Person; or

6. Allow a person to bring Intoxicating Beverages onto the premises of a Licensed Establishment for the purposes of consuming them himself, or providing them to other individuals.

Section 9. Enforcement

A. Criminal Penalties

1. A Permittee or Permitted Server who is subject to the criminal jurisdiction of the Pueblo and is found guilty of violating any portion of this Ordinance shall have his/her/its Permit immediately revoked subject to reinstatement after a hearing pursuant to subsection 6.D.3, and such individual shall be subject to a fine not to exceed $500.00 for each violation.

2. Any person subject to the criminal jurisdiction of the Pueblo who is found guilty of purchasing Intoxicating Beverages on behalf of a minor or an intoxicated person shall be subject to a fine not to exceed $500.00 for each violation or not to exceed one (1) month in jail.

3. Any minor subject to the criminal jurisdiction of the Pueblo purchasing, attempting to purchase or found in possession of Intoxicating Beverages shall be subject to a fine not to exceed $500.00 for each violation.

4. Any person subject to the criminal jurisdiction of the Pueblo who is found guilty of having made any materially false statement or concealed any material facts in his/her application for a Permit granted pursuant to the provisions of this Ordinance shall be immediately discharged from employment and shall be subject to a fine not to exceed $500.00 for each violation.

B. Civil Penalties

1. Any non-member Permittee violating any provision of this Ordinance or regulations promulgated hereunder may be subject to revocation of its Permit and such other civil sanctions as are provided in rules and regulations implementing this Ordinance.

2. Any Permitted Server who is not a member of the Pueblo and who violates any provision of this Ordinance or regulations promulgated hereunder may be subject to revocation of his/her Permit as well as immediate termination of his/her employment.

3. Any non-member of the Pueblo who purchases Intoxicating Beverages on behalf of a minor or an Intoxicated Person shall be subject to exclusion from Pueblo lands.

Section 10. Rules and Regulations

The Tribal Council may adopt and enforce rules and regulations to implement this Ordinance. The rules and regulations will be in conformance with New Mexico State law if applicable, and with this Ordinance, and will be submitted for Secretarial review where required by federal law.

Section 11. Amendment

This Ordinance amends and supplements the prior Liquor Ordinance of the Pueblo of Sandia, enacted and certified on March 13, 1958 (23 FR 1742). This amendment shall be effective upon publication in the **Federal Register**.

Section 12. Severability

In the event any provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.

Section 13. Sovereign Immunity

The sovereign immunity of the Pueblo of Sandia shall not be waived by this Ordinance.

[FR Doc. 01–7271 Filed 3–23–01; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–8974]

Proposed California Desert Conservation Area Plan Amendment and Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Proposed New 230–kV "BN–BS" Transmission Line Project, California

AGENCY: Bureau of Land Management (BLM) and the Imperial Irrigation District (IID), Interior

ACTION: Notice of Intent to prepare a California Desert Conservation Area (CDCA) Plan Amendment and joint EIS/EIR addressing a proposed 230–kV transmission line project.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the IID, propose to prepare an amendment to the California Desert Conservation Area (CDCA) Plan and to direct the preparation of a joint EIS/EIR for the IID's proposed 230 kilovolt (kV) "BN–BS" Transmission Line Project. The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulation for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the IID is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), and implementing guidelines (California Code of Regulations [CCR] Title 14, section 15000 et seq.), and IID's Rules and Regulations to Implement CEQA. This notice initiates the public participation process for planning, initiates public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, Western Area Power Administration, the Department of

Defense, the State Historic Preservation Officer, and the California Department of Fish and Game.

DATES: For scoping meetings and comments: Two public scoping meetings will be held during 2001 on the following dates:

1. March 28, from 7–10 p.m., at the IID Board Room, La Quinta, CA.
2. March 29, from 7–10 p.m., at the Blythe City Council Multipurpose Room, Blythe, CA.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft Plan/EIR/EIS. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna—Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260. The meeting locations are:

1. Imperial Irrigation District, 81–600 Ave. 58, La Quinta, CA.
2. Blythe City Council Multipurpose Room, 235 N. Broadway, Blythe CA.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Imperial Irrigation District (IID) is a community owned utility providing power to more than 90,000 customers in Imperial County and parts of Riverside and San Diego Counties, all in California. The IID is experiencing an increase in electrical demand at an estimated rate of 20 to 30 megawatts annually. In an effort to meet electrical power demand, the IID is proposing to construct a 230 kilovolt (kV) electrical transmission line from Niland to Blythe, California to access available electrical power in the Blythe area. The proposed electrical transmission line begins four miles west of the City of Blythe, in Riverside County, California and traverses south and west to a point located 5.5 miles southeast of the City of Niland, in Imperial County, California. IID has an existing 161kV transmission line right-of-way, #CA–8974, from Niland to Blythe, California. IID is proposing to construct the 230 kV line adjacent to and parallel to their existing 161 kV line requiring an additional 360 foot wide right-of-way.

An amendment to the CDCA Plan is required because the existing 161 kV line and this proposal are not within one of the 16 utility corridors as designated in the California Desert Conservation Area (CDCA) Plan of 1980, as amended. The CDCA Plan states that new utility needs which do not conform to the adopted corridor system will be processed by means of a Plan Amendment in conjunction with necessary permit hearing required by other agencies. The proposed plan amendment will consider a range of alternatives including: (1) Allowing a one time exemption to the CDCA Plan Utility Corridor element to allow for installation of IID's proposed new 230 kV transmission line, (2) designating a new utility corridor from Niland to Blythe along the same route, and (3) not amending the CDCA Plan. If the CDCA Plan is not amended, then BLM may authorize installation of the 230 kV line transmission within existing utility corridors only, or BLM may deny the project. All of these alternatives will be analyzed within the EIS/EIR.

BLM has identified a preliminary list of issues which will need to be addressed in this analysis. Members of the public are invited to identify additional issues and concerns to be addressed. The preliminary list of issues includes the following: as proposed, this 230 kV line would traverse critical desert tortoise habitat as well as several BLM administered areas including the Chuckwalla Bench Area of Critical Environmental Concern, the Bradshaw Trail National Backcountry Byway, and the Mule Mountains Long Term Visitor Area. The proposed transmission line is also directly adjacent to the southern boundary of the Little Chuckwalla Mountains Wilderness Area. Of the 60 mile length of the proposed transmission line, approximately 44 miles is on BLM public lands administered by both the El Centro and Palm Springs-South Coast Field Offices. These 44 miles include a 17 mile portion that is on the United States Navy Chocolate Mountains Aerial and Gunnery Range.

Planning criteria (43 CFR 1610.4–2) are parameters, generally based on applicable law, which guide development of the plan amendment, to ensure the planning process to tailored to the issues and unnecessary data collection is avoided. The BLM has put together the following preliminary list of planning criteria and invites the public to provide written comments on these criteria. The draft Northern and Eastern Colorado Desert (NECO) Plan and draft EIS shall be considered to ensure that there are no inconsistencies between NECO and the IID proposal. This is critical as the NECO Plan has been prepared to addressed recovery of the Federally listed desert tortoise. The IID proposal itself will be subject to Section 7 consultation in accordance with the Endangered Species Act of 1973 as amended to address potential impacts to desert tortoise, including cumulative impacts.

The planning process and environmental review analysis for the CDCA Plan Amendment shall be conducted from an interdisciplinary perspective to ensure all issues are adequately addressed. At minimum, input shall be sought from the following disciplines: biological resources, cultural resources, visual resource management, recreation, wilderness, and lands and realty.

Interested members of the public are invited to participate in this planning/NEPA process, and are requested to help identify issues or concerns, additional planning criteria, and alternatives to be considered related to this proposed CDCA Plan amendment and proposed 230 kV transmission line. When available, the public will be provided a 90-day public review period on the draft plan amendment/EIS/EIR and a 30-day protest period on the proposed plan amendment/ final EIS/EIR. These documents will be made available on the Internet at BLM's website: *www.ca.blm.gov* and at local public libraries in the cities of Blythe, Niland, La Quinta and Cathedral City, California. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project. Local notice will be provided a minimum of 15 days prior to the meeting dates.

James G. Kenna,

Field Manager.

[FR Doc. 01–7310 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include a plan amendment overview for the Pine Nut Mountains; a presentation on landscape-level management of sagebrush dependant species and Great Basin restoration concepts; a review of planning for the Knott Creek Grazing Allotment with a preview of a July 2001 RAC field trip to the allotment; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council at 9 a.m. on Friday, April 27, 2001. The detailed agenda will be available on the internet by April 12, 2001, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than April 20, 2001.

DATE & TIME: The RAC will meet on Thursday, April 26, 2001, from 9:00 a.m. to 5:00 p.m., and Friday, April 27, 2001, from 8:00 a.m. to 4:00 p.m., at Walley's Hot Springs Resort, 2001 Foothill Road (NV State Route 206), Genoa, Nevada. A field trip will be conducted to the Pine Nut Mountains on Thursday, April 26, 12:00 p.m. to 5:00 p.m.—members of the public are invited to attend, but will need to provide their own high-clearance vehicle, lunch and water. Public comment on individual topics will be received at the discretion of the council chairperson, as meeting moderator, with a general public comment period on Friday, April 27, 2001, at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

Dated: March 16, 2001.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 01–7311 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–5410–EQ–B139; CACA 42646]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 40 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677.

T. 9 S., R. 22 E., Mount Diablo Meridian

Sec. 6, NW¼NE¼

County-Madera.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

David Mcilnay,

Chief, Branch of Lands.

[FR Doc. 01–7309 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Chiricahua National Monument, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement and General Management Plan for Chiricahua National Monument.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Chiricahua National Monument, Arizona.

DATES: The DEIS/GMP was on public review from November 5, 1999, through January 15, 2000. Responses to public comment are addressed in the FEIS/GMP.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent Chiricahua National Monument, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737. Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Chiricahua National Monument, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737, Telephone: 520–824–3560

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851

Office of Public Affairs, National Park Service, Department of the Interior 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843

Reading copies are also available online at the park's planning website at *http://www nps.gov/planning/chir.*

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes 3 alternatives to identify and assess the various management alternatives and related environmental impacts relative to park operations, visitor use and access, natural and cultural management, and general development at the monument. The general management plan would guide the management of the Chiricahua National Monument for the next 12 to 15 years. Alternative A, The National Park Service proposal, identified as one of the alternatives, would retain most

existing visitor experiences and would construct a new headquarters/visitor orientation/administrative area just outside park boundaries. Alternative B provides for a traditional park experience with increased personal services and a small number of facility enhancements. The No-Action Alternative would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on visitor experience, cultural resources, long-term health of natural ecosystems, economic contribution to gateway communities, adjacent landowners, and operational efficiency.

FOR FURTHER INFORMATION CONTACT: Superintendent, Chiricahua National Monument, at the above address and telephone number.

Dated: March 2, 2001.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–7375 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Fort Bowie National Historic Site, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement and General Management Plan for Fort Bowie National Historic Site.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Fort Bowie National Historic Site, Arizona.

DATES: The DEIS/GMP was on public review from November 29, 1999 through January 15, 2000. Responses to public comment are addressed in the FEIS/GMP.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent Fort Bowie National Historic Site, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737. Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Fort Bowie National Historic Site, Dos Cabezas Route, Box 6500, Willcox, Arizona 85643–9737, Telephone: 520–824–3560

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843

Reading copies are also available online at the park's planning website at *http://www.nps.gov/planning/fobo/.*

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes two alternatives to identify and assess the various management alternatives and related environmental impacts relative to park operations, visitor use and access, natural and cultural management, and general development at the monument. The general management plan would guide the management of the Fort Bowie National Historic Site for the next 12 to 15 years. The National Park Service proposal continues the concept established—the principle of a very low level of development, intended to allow the visitor a "discovery" experience in a place of "historic abandonment." The No-Action Alternative would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on visitor experience, cultural resources, long-term health of natural ecosystems, economic contribution to gateway communities, adjacent landowners, and operational efficiency.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Bowie National Historic Site, at the above address and telephone number.

Dated: March 2, 2001.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–7376 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement on the Special Resource Study for Fort King, Ocala, FL

SUMMARY: The National Park Service (NPS) will prepare a Draft Environmental Impact Statement (DEIS) to accompany its Special Resource Study (SRS) for Fort King. The NPS will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns and suggestions believed to be relevant to the management of Fort King and its potential inclusion as a unit of the National Park System. Of particular interest to the NPS are suggestions and ideas for managing cultural and natural resources and the visitor experience at Fort King. The DEIS will formulate and evaluate environmental impacts associated with various types and levels of visitor use and resources management at the site.

DATES: The dates and times of the public scoping meetings will be published in local newspapers and on the Special Resource Study web site for Fort King. These dates and times may also be obtained by contacting the NPS Southeast Regional Office, Division of Planning. Scoping suggestions will be accepted throughout the planning process but are urged to be submitted prior to July 1, 2001. The NPS anticipates that the DEIS will be available for public review by December 1, 2001.

ADDRESSES: The locations of the public scoping meetings will be published in local newspapers and on the Special Resource Study web site for Fort King which is *http://www.nps.gov/sero/fortking/*srs_info.htm. These locations may also be obtained by contacting the NPS Southeast Regional Office, Division of Planning.

Written scoping suggestions should be submitted to the following address: Planning Team Leader, Fort King Special Resource Study, NPS Southeast Regional Office, Division of Planning and Compliance, 100 Alabama Street, SW, 6th Floor, 1924 Building, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Planning Team Leader, Fort King Special Resource Study, 404–562–3124, extension 693.

SUPPLEMENTARY INFORMATION: The NPS has announced that an EIS on SRSs will be prepared for all proposed park units; consistent with this policy this EIS is being prepared. Issues currently being

considered for the EIS include a determination of Fort King's national significance and an assessment of the site's suitability and feasibility as a potential addition to the National Park System as a National Historic Site. The EIS will identify cultural and natural resources of Fort King and evaluate a range of potential management options that might adequately protect these resources.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish for 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 submission from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

Dated: March 2, 2001.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 01–7379 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Minuteman Missile National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a draft general management plan and draft environmental impact statement for Minuteman Missile National Historic Site, South Dakota.

SUMMARY: The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for Minuteman Missile National Historic Site, South Dakota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses or meetings. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinions about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

ADDRESSES: Written comments and information concerning the scope of the EIS, requests to be added to the project mailing list, and other matters should be directed to: Mr. William Supernaugh, Superintendent, Minuteman Missile National Historic Site, c/o Badlands National Park, P.O. Box 6, Interior, South Dakota 57750. Telephone: 605–433–5361. E-mail: mimi_information@nps.gov.

FOR FURTHER INFORMATION CONTACT: William Supernaugh, Superintendent, Minuteman Missile National Historic Site, at the address and telephone number listed above.

SUPPLEMENTARY INFORMATION: Minuteman Missile National Historic Site is located in Jackson and Pennington counties, South Dakota. Established on December 2, 1999, this is a new unit of the National Park System. Congress has required that process for preparing a general management plan for the historic site commence within three years of the date of establishment.

The Act creating Minuteman Missile National Historic Site described the site's purpose as: (1) To preserve, protect, and interpret for the benefit and enjoyment of present and future generations the structures associated with the Minuteman II missile defense system; (2) to interpret the historical role of the Minuteman II missile defense system as a key component of America's strategic commitment to preserve world peace and the broader context of the events of the Cold War; and (3) to complement the interpretive programs relating to the Minuteman II missile defense system offered by the South Dakota Air and Space Museum at Ellsworth Air Force Base.

In accordance with NPS Park Planning policy, the GMP will ensure the Historic Site has a clearly defined direction for resource preservation and visitor use. The GMP will help define what types of resource conditions, visitor uses, and management actions will best achieve the mission of the National Park Service and Minuteman Missile National Historic Site. Additionally the GMP process will address facility needs, staffing, park interpretation and activities, and maintenance. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the Monument will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: March 9, 2001.

Catherine A. Damon,

Acting Regional Director.

[FR Doc. 01–7378 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on May 31, and June 1 and 2, 2001, in Kelseyville, CA.

The review committee will meet at the Konocti Harbor Resort & Spa, 8727 Soda Bay Road, Kelseyville, CA 95451, telephone (707) 279-4281, fax (707) 279-8575.

The agenda for the meeting will include 1999/2000 and 2001 Reports to Congress, discussion of Federal agency compliance, consideration of a dispute proposed by the Fallon Paiute-Shoshone tribe, contamination of cultural items, reburial on Federal lands, and implementation of the statute in the West.

A block of lodging rooms has been set aside at the Konocti Harbor Resort & Spa. Reservations must be made by May 1, 2001, to guarantee the reduced rate available for persons attending this meeting. Please reference the National Park Service and the NAGPRA Review Committee meeting when making reservations.

Meeting sessions will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day. The meeting is open to the public. Meeting space is limited.

Persons will be accommodated on a first-come, first-served basis.

Persons wishing to make a presentation to the review committee should submit a request to do so by May 1, 2001. Please submit a written abstract of your presentation and your contact information. Any member of the public may also file a written statement for consideration by the review committee by May 16, 2001. Written requests and statements should be addressed to the review committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW-350 NC, Washington, DC 20240.

Persons wishing further information concerning this meeting may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW-350 NC, Washington, DC 20240, telephone (202) 343–3387, fax (202) 343–5260, e-mail john< robbins@nps.gov. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, 800 North Capitol Street NW, Suite 350, Washington, DC 20001.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

Dated: March 7, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 01–7382 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Pacific West Region; San Francisco Maritime National Historical Park; Notice of Meeting and Request for Public Comment

The National Park Service is seeking public comments regarding the restoration and preservation efforts and plans for the fleet of seven historical ships located at Hyde Street Pier, San Francisco Maritime National Historical Park.

In addition, public comments and questions are being sought regarding the historic leasing act project to convert the Haslett Warehouse building into a hotel and museum/visitor center.

A public meeting will be held on April 11, from 10:00 am until 12:15 pm at the Firehouse Building F, Lower Fort Mason Center, San Francisco, California.

All written comments will be available for public review. We anticipate that we will tape record and transcribe oral comments that are submitted at the April 11th meeting, and that these comments will also be available for public review.

FOR FURTHER INFORMATION CONTACT: San Francisco Maritime National Historical Park Superintendent William G. Thomas at (415) 556–6282.

Department of Interior Agenda for the April 11, 2001 Public Meeting of the Advisory Commission for the San Francisco Martime National Historical Park

Firehouse Building F, Lower Fort Mason Center 10:00 am–12:15 pm

10 am
Welcome—Neit Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman
Approval of Minutes from Previous Meeting

10:15 am
William Thomas, Superintendent

10:30 am
C.A. Thayer status—Michael Bell, Project Officer

10:45 am
Haslett Visitor Center—Marc Hayman, C, Interpretation & Resource Management

11:15 am
Ships Preservation Report—Wayne Boykin, Ships Manager

11:45 am
Public Comments and Questions

12 pm
Agenda items/Date for next meeting

Michael R. Bell,

Superintendent.

[FR Doc. 01–7377 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects In the Possession of Chadron State College, Chadron, NE

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Chadron State College, Chadron, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Rick Weathermon of the University of Wyoming as consultant to Chadron State College. The staff of Chadron State College has consulted with and provided a report describing the findings of the University of Wyoming assessments of the human remains and associated funerary objects to representatives of the Apache Tribe of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North and South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota.

At unknown dates, human remains representing eight individuals were donated to Chadron State College. Circumstances involving the original acquisitions of the human remains and associated funerary objects are unknown. Based on other known collection practices, the human remains and associated funerary objects may have been collected during student field trips or as a result of inadvertent discovery by local ranchers, farmers, or amateur archeologists in the following areas: Harding, Pennington, Bennett, Perkins, Shannon, Lawrence, Jackson, Butte, Custer, Todd, Meade, and Fall River counties in South Dakota; and Dawes, Kimball, Morrill, Sheridan, Cherry, Scottsbluff, Cheyenne, Arthur, Sioux, Grant, Keith, McPherson, Banner, Box Butte, and Hooker counties in Nebraska. The remains were stored in the pathology laboratory and earth science laboratory in the Chadron State College Science and Mathematics building. No known individuals were identified. The seven associated funerary objects include a vial of fabric fragments and small glass trade beads; glass perfume bottles; brass armbands or bracelets; a necklaces made of glass beads; brass beads; bone hair pipes; and a projectile point found imbedded in an individual.

Based on osteological and historical information, the individuals have been determined to be Native American. Analysis of funerary objects associated with two of the individuals indicates that they were interred after A.D. 1889. Based on analysis of a chert arrow point found embedded in a third individual, the date of interment was between the late prehistoric period and A.D. 1870. The five other individuals were interred between the archaic period and the prehistoric period. Based on historical records and archeological evidence, the Apache, Comanche, Kiowa, Cheyenne, Arapaho, Sioux, Crow, Shoshone, Ute, Pawnee, Omaha, Ponca, and Otoe have occupied, traveled through, or hunted in the region proximate to Chadron State College, Agate Fossil Beds National Monument and the Pine Ridge Reservation. Historic treaties, land-claim cases, and other legal materials indicate that the Cheyenne, Arapaho, Sioux, Crow, Omaha, Ponca, and Pawnee have legal connections to the area. The Kiowa, Apache, Cheyenne, Arapaho, Sioux, Crow, Pawnee, and Ponca have contemporary cultural connections to the area. A conference was convened on December 4, 2000, by Chadron State College for the purpose of discussing the cultural affiliation and repatriation of the human remains and associated funerary objects in the possession of the college. At this conference representatives from the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota provided oral history evidence of shared group identity and cultural affiliation to the human remains. The Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota represents the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; and Yankton Sioux Tribes of South Dakota in repatriation of all human remains and cultural items in the possession and control of museums and Federal agencies, as authorized in an inter-tribal Memorandum of Agreement.

Based on the above-mentioned information, officials of the Chadron State College have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Chadron State College have also determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Chadron State College have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Apache Tribe of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North and South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota. This notice has been sent to officials of the Apache Tribe of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North and South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and

associated funerary objects should contact Dr. Monty G. Fickel, Dean, School of Mathematics and Science, Chadron State College, 1000 Main Street, Chadron, NE 69337, telephone (308) 432–6293, before April 25, 2001. Repatriation of the human remains and associated funerary objects to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota may begin after that date if no additional claimants come forward.

Dated: March 13, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 01–7380 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a doll in a wooden coffin.

In or before 1903, this cultural item was collected in California by Grace Nicholson with funding from Lewis H. Farlow. The cultural item was donated to the Peabody Museum of Archaeology and Ethnology by Mr. Farlow in 1903.

Peabody Museum of Archaeology and Ethnology records indicate that this cultural item was removed from a "Klamath Indian" grave along the Klamath River, CA. Klamath Indian peoples are represented by the present-day Klamath Indian Tribe of Oregon. Based on the specific cultural attribution in museum records, the probable 19th-century date of the burial, geographical location of origin within the historical territory of the Klamath Indian Tribe of Oregon, this cultural item is considered to be affiliated with the Klamath Indian Tribe of Oregon.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this unassociated funerary object and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-2254, before April 25, 2001. Repatriation of this unassociated funerary object to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: March 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7381 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is an iron earring.

Between 1880-1890, this cultural item was recovered from a grave about 8 miles from Throckmorton, Throckmorton County, TX, by relatives of Watson Grant Cutter. In 1967, Mr. Cutter gifted this cultural item to the Peabody Museum of Archaeology and Ethnology.

Museum records indicate that this cultural item was recovered from a Comanche grave located 8 miles from Throckmorton, Thockmorton County, TX. Based on the specific cultural affiliation described by the collector as well as the description of the burial context, this burial was most likely a Comanche burial from the historic period. Consultation with representatives of the Comanche Indian Tribe, Oklahoma identifies Throckmorton County, TX, as part of Comanche traditional territory during the historic period.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this unassociated funerary object and the Comanche Indian Tribe, Oklahoma. This notice has been sent to officials of the Comanche Indian Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617)

495-2254, before April 25, 2001. Repatriation of this unassociated funerary object to the Comanche Indian Tribe, Oklahoma may begin after that date if no additional claimants come forward.

Dated: March 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7383 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a stone bear effigy.

In 1902, this cultural item was washed out from a grave on the Klamath Reservation and collected by an unknown Klamath Indian, who gave the cultural item to Mr. L. Warren. In 1903, Mr. Warren gifted this cultural item to the Peabody Museum of Archaeology and Ethnology.

According to museum records, this cultural item was recovered from a grave on the Klamath Reservation, Oregon. Based on the location of the burial and the cultural information provided in museum documentation, this burial was most likely a Klamath burial from the historic period. Historic sources, oral traditions, and consultation information support this cultural item's being from the burial of a Klamath individual from traditional Klamath territory in Oregon.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this unassociated funerary object and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-2254, before April 25, 2001. Repatriation of this unassociated funerary object to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: March 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7384 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; the Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; the Boise Fort Band of the Minnesota Chippewa Tribe, Minnesota; the Citizen Potawatomi Nation, Oklahoma; the Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; the Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan; the Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; the Keweenaw Bay Indian Community of L'Anse and Ontonagon Band of Chippewa Indians of the L'Anse Reservation, Michigan; the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; the Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; the Little River Band of Ottowa Indians of Michigan; the Little Traverse Bay Band of Odawa Indians of Michigan; the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; the Ottawa Tribe of Oklahoma; the Pokagon Band of Potawatomi Indians of Michigan; the Prairie Band of Potawatomi Indians, Kansas; the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; the Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; the Sault Ste. Marie Tribe of Chippewa Indians of

Michigan; the Sokagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; and the White Earth Band of the Minnesota Chippewa Indian Tribe, Minnesota.

In 1937, human remains representing two individuals were transferred to the Peabody Museum of Archaeology and Ethnology from the Robert S. Peabody Museum, Andover, MA. No known individuals were identified. No associated funerary objects are present.

The date, location, and identity of the collector of these human remains are unknown. The Robert S. Peabody Museum catalog record designates these individuals as "Sauk Indians." Based on this specific cultural attribution, the human remains probably date around the time of sustained European contact with Sauk communities in the 18th and 19th centuries.

Based on the specific cultural attribution in museum records, geographical, and historic evidence, these human remains are considered to be culturally affiliated with the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; and the Sac and Fox Tribe of the Mississippi in Iowa.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; and the Sac and Fox Tribe of the Mississippi in Iowa. This notice has been sent to officials of the the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; the Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; the Boise Fort Band of the Minnesota Chippewa Tribe, Minnesota; the Citizen Potawatomi Nation, Oklahoma; the Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; the Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan; the Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; the Keweenaw Bay Indian Community of L'Anse and Ontonagon Band of Chippewa Indians of the L'Anse Reservation, Michigan; the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; the Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; the Little River Band of Ottowa Indians of Michigan; the Little Traverse Bay Band of Odawa Indians of Michigan; the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; the Ottawa Tribe of Oklahoma; the Pokagon Band of Potawatomi Indians of Michigan; the Prairie Band of Potawatomi Indians, Kansas; the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; the Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; the Sault Ste. Marie Tribe of Chippewa Indians of Michigan; the Sokagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; and the White Earth Band of the Minnesota Chippewa Indian Tribe, Minnesota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before April 25, 2001. Repatriation of the human remains to the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; and the Sac and Fox Tribe of the Mississippi in Iowa may begin after that date if no additional claimants come forward.

Dated: March 9, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7435 Filed 3–23–01 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethology that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The six cultural items are five metal brooch fragments and red pigment powder.

Prior to 1900, these cultural items were collected by Rev. J.W. Millar from a grave near Harbor Springs, Emmet County, MI. In 1909, these cultural items were donated to the Peabody Museum of Archaeology and Ethnology by Lewis H. Farlow.

Museum records indicate that these cultural items are "Chippewa" and were "supposed to be 150 years old in 1899." This specific cultural attribution indicates that the collector was aware of the culture of the burial and suggests that it dated to historic times. The style of these brooch fragments are consistent with metal trade items of the 18th and early 19th centuries.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these six cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably

traced between these unassociated funerary objects and the Little Traverse Bay Band of Odawa Indians of Michigan. This notice has been sent to officials of the Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; the Grand Traverse Band of Ottaawa and Chippewa Indians of Michigan; the Little Traverse Bay Band of Odawa Indians of Michigan; the Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-2254, before April 25, 2001. Repatriation of these unassociated funerary objects to the Little Traverse Bay Band of Odawa Indians of Michigan may begin after that date if no additional claimants come forward.

Dated: March 7, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7437 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe Hearst Museum of Anthropology, University of California-Berkeley, Berkeley, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe Hearst Museum of Anthropology, University of California-Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Phoebe Hearst Museum of Anthropology professional staff in consultation with representatives of Chugach Alaska Corporation and the Native Village of Eyak.

Prior to 1878, human remains representing one individual [Cat. 12-3487] were recovered from the "Aleutian Islands (Nutchuk Id), Aleut" (now known as Hinchinbrook Island), Prince William Sound, AK, by B.G. McIntyre of the Alaska Commercial Company. In 1913, these human remains were donated to the University of California Anthropology Museum (now the Phoebe Hearst Museum of Anthropology) by the Bancroft Library of the University of California. No known individual was identified. No associated funerary objects are present.

Based on geographic evidence, linguistic evidence, published folklore, and archeological evidence indicating over 2,000 years of cultural continuity, this individual has been determined to be Native American affiliated with Chugach Alaska Corporation and the Native Village of Eyak.

Based on the above-mentioned information, officials of the Phoebe Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Phoebe Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and Chugach Alaska Corporation and the Native Village of Eyak. This notice has been sent to officials of Chugach Alaska Corporation and the Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchock, Interim NAGPRA Coordinator, Phoebe Hearst Museum of Anthropology, University of California, Berkeley, CA 94720, telephone (510) 643–7884, before April 25, 2001. Repatriation of the human remains to Chugach Alaska Corporation and the Native Village of Eyak may begin after that date if no additional claimants come forward.

Dated: March 9, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–7436 Filed 3–23–01; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–443]

In the Matter of Certain Flooring Products; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Certain Claims of a Recently Issued Patent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") amending the complaint and notice of investigation in the above-captioned investigation to add allegations of infringement by twelve claims (1, 8, 13, 14, 21, 26, 27, 34, 39, 40, 41 and 48) of a recently issued patent, U.S. Letters Patent 6,182,410 ('410 patent).

FOR FURTHER INFORMATION CONTACT: Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–3096. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://www.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 29, 2000, based on a complaint filed on behalf of Alloc, Inc., Berry Finance N.V., and Valinge Aluminum AB. The seven respondents are Unilin Decor N.V., BHK of America, Meister-Leisten Schulte GmbH, Roysol, Akzenta Paneele + Profile GmbH, Tarkett, Inc., and Pergo, Inc.

On February 16, 2001, complainants moved to amend the complaint and notice of investigation to add allegations of infringement by twelve claims in the

recently issued '410 patent. The motion was supported by the Commission investigative attorney, but opposed by certain respondents. On March 5, 2001, the ALJ issued an ID (Order No. 8.) granting the motion. No party petitioned for review of the ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 CFR 1337), and in section 210.42(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(a)). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

By Order of the Commission.

Issued: March 21, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–7441 Filed 3–23–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–6]

Certain Steel Wire Rod: Monitoring Developments in the Domestic Industry

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 204(a) of the Trade Act of 1974 (19 U.S.C. § 2254(a)) (the Act).

SUMMARY: The Commission instituted the investigation for the purpose of preparing the report to the President and the Congress required by section 204(a)(2) of the Trade Act of 1974 on the results of its monitoring of developments with respect to the domestic certain steel wire rod industry since the President imposed a tariff-rate quota on imports of certain steel wire rod [1] effective March 1, 2000.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

EFFECTIVE DATE: March 16, 2001.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

Following receipt of a report from the Commission in July 1999 under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) containing an equally divided determination on the question of whether certain steel wire rod was being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic wire rod industry, and containing remedy recommendations, the President, on February 16, 2000, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. § 2253), issued Proclamation 7273, announcing that he considered the determination of the Commissioners voting in the affirmative to be the determination of the Commission, and imposing import relief in the form of a tariff-rate quota on imports of certain steel wire rod for a period of 3 years and 1 day, effective March 1, 2000. Section 204(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2254(a)(1)) requires that the Commission, so long as any action under section 203 of the Trade Act remains in effect, monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition. Section 204(a)(2) requires, whenever the initial period of an action under section 203 of the Trade Act exceeds 3 years, that the Commission submit a report on the results of the monitoring under section 204(a)(1) to the President and the Congress not later than the mid-point of the initial period of the relief, or by August 30, 2001, in this case. Section 204(a)(3) requires that the Commission hold a hearing in the course of preparing each such report.

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public Hearing

As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on July 11, 2001, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 2, 2001. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 6, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

[1] The imported article covered by this investigation is defined as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60 of the Harmonized Schedule of the United States (HTS). The scope of this investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTS subheadings. Also excluded from the scope of the investigation are wire rod of tire cord quality, valve spring quality, class III pipe wrap quality, aircraft cold heading quality, aluminum cable steel reinforced ("ACSR") quality, piano wire string quality, grade 1085 annealed bearing quality, and grade 1080 tire bead wire quality. These products are described in detail in the annex to Presidential Proclamation 7273 (65 FR 8624, February 18, 2000).

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is July 3, 2001. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is July 18, 2001. In addition, any person who has not entered an appearance as a party to the investigation may submit, on or before July 18, 2001, a written statement concerning the matters to be addressed in the Commission's report to the President. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: March 20, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–7440 Filed 3–23–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and nine states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

Matters for discussion are expected to include: (1) Compact Record Screening Requirements, (2) National Fingerprint File State Audit and Sanctions Criteria, (3) Rap Sheet Standardization, (4) Proposed Plan—Flat Fingerprint Based Applicant Background Checks, including the merits of flat versus rolled fingerprint capabilities, (5) Proposal to Improve Service to the Noncriminal Justice Customers Seeking III Information, and (6) Definition of Administration of Criminal Justice.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mrs. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 am until 5 pm on May 2–3, 2001 and from 9 am until 1 pm on May 4, 2001.

ADDRESSES: The meeting will take place at the Holiday Inn Old Town Scottsdale, 7353 E. Indian School Road, Scottsdale, Arizona, telephone (480) 941–2567.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Cathy L. Morrison, Interim Compact Officer, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, WV 26306–0147, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: March 14, 2001.

Thomas E. Bush, III,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 01–7330 Filed 3–23–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Petition for Alien Fianc(e).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. INS is requesting emergency review from OMB of this information collection to ensure compliance with section 1003 of the Legal Immigration Family Equity Act of 2000 (LIFE) which allows the spouse or child of a U.S. citizen to enter the U.S. as a nonimmigrant. Emergency review and approval of this ICR ensures that the applicant may apply for this benefit utilizing the revised collection instrument. Therefore, OMB approval has been requested by March 23, 2001.

If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, N.W., Suite 10235, Washington, DC 20503; Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until May 25, 2001. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director. Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection: Revised information collection.*

(2) *Title of the Form/Collection:* Petition for Alien Fianc(e).

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129F. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by a U.S. citizen to facilitate the entry of his/her fiancé(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form also allows the spouse or child of a U.S. citizen to enter the U.S. as a nonimmigrant, in accordance with provisions of section 1103 of the Legal Immigration Family Equity Act of 2000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, N.W., National Place Building, Suite 1220, Washington, DC 20530.

Dated: March 19, 2001.

Richard A. Sloan,

Department Clearonce Officer, United Stotes Department of Justice Immigration and Noturalizotion Service.

[FR Doc. 01–7341 Filed 3–23–01; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (01–039)

NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: Wednesday, April 18, 2001, 9:00 a.m. to 5:00 p.m. and Thursday, April 19, 2001, 9:00 a.m. to 12:00 Noon.

ADDRESSES: Regional Airline Association, 2025 M Street, N.W., Suite 800, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Report on Aviation Safety Reporting System

—Report on Aviation Performance Measuring System Program

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 visitors register.

Dated: March 20, 2001.

Beth M. McCormick,

Advisory Committee Manogement Officer, Notionol Aeronoutics and Space Administration.

[FR Doc. 01–7345 Filed 3–23–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (01–040)

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463. as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee.

DATES: Thursday, April 19, 2001, 8:00 a.m. to 4:30 p.m.; and Friday, April 20, 2001, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Headquarters Building 4200, Room P–110, Marshall Space Flight Center, AL 35812.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

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:

—ASTAC Restructuring Strategy

—Space Launch Initiative (SLI) Program

—Aviation Safety Research

—Government Performance Results Act (GPRA) 2001 Status

—Reports from Goals and Propulsion Subcommittees

—George C. Marshall Space Flight Center Tour

—Report on National Science and Technology Councils Vision 2050

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administrotion.

[FR Doc. 01–7346 Filed 3–23–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for a working group of NCD's advisory committee—International Watch. Notice of this meeting is required under section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Work Group: International Convention on the Human Rights of People with Disabilities.

Date and Time: May 4, 2001, 12:00 p.m.–1:00 p.m. EDT.

For International Watch Information Contact: Kathleen A. Blank, Attorney/Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, D.C. 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meetings/Conference Calls: This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on March 21, 2001.

Jeffrey T. Rosen,

General Counsel and Director of Policy.

[FR Doc. 01–7446 Filed 3–23–01; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–35 (50–397)]

In the Matter of Energy Northwest Columbia Generating Station Independent Spent Fuel Storage Installation; Exemption

I

Energy Northwest, the licensee, is planning to implement the general license provisions of 10 CFR Part 72 for receipt and storage of spent fuel from the Columbia Generating Station at an Independent Spent Fuel Storage Installation (ISFSI) located on the Columbia Generating Station site. The facility is located in Benton County, Washington.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulation in 10 CFR part 72 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Section 72.72(d) of 10 CFR part 72 requires each licensee to keep duplicate records of spent fuel and high-level radioactive waste in storage. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. The applicant stated that, pursuant to 10 CFR 72.140(d), the Energy Northwest Operational Quality Assurance (QA) Program Description will be used to satisfy the QA requirements for the ISFSI. The QA Program Description states that QA records are maintained in accordance with commitments to ANSI N45.2.9–1974. ANSI N45.2.9–1974 allows for the storage of QA records in a duplicate storage location sufficiently remote from the original records or in a record storage facility subject to certain provisions designed to protect the records from fire and other adverse conditions. The applicant seeks to streamline and standardize recordkeeping procedures and processes for the Columbia Generating Station and ISFSI spent fuel records. The applicant states that requiring a separate method of record storage for ISFSI records diverts resources unnecessarily.

ANSI N45.2.9–1974 provides requirements for the protection of nuclear power plant QA records against degradation. It specifies design requirements for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific requirements for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88, "Collection, Storage and Maintenance of Nuclear Power Plant Quality Assurance Records," as adequate for satisfying the recordkeeping requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

III

By letter dated December 12, 2000, Energy Northwest requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that "Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records." The applicant proposes to maintain a single set of spent fuel records in storage at a record facility that satisfies the requirements set forth in ANSI N45.2.9–1974.

IV

The staff considered the applicant's request and determined that granting the proposed exemption from the requirements of 10 CFR 72.72(d) is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The staff grants the exemption, subject to the following conditions:

(1) Energy Northwest may maintain records of spent fuel and high-level radioactive waste in storage either in duplicate as required by 10 CFR 72.72(d), or alternatively, a single set of records may be maintained at a record storage facility that satisfies the standards set forth in ANSI N45.2.9–1974.

(2) All other requirements of 10 CFR 72.72(d) shall be met.

The documents related to this proposed action are available for public

inspection and for copying (for a fee) at the NRC Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at http://www.nrc.gov/NRC/ADAMS/index.html (the Public Electronic Reading Room).

Pursuant to 10 CFR 51.35, NRC has published it finding that granting this exemption will have no significant impact on the quality of the human environment in the **Federal Register** (66 FR 10758).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of March 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–7355 Filed 3–23–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11–50–312]

In the Matter of Sacramento Municipal Utility District Rancho Seco Independent Spent Fuel Storage Installation; Exemption

I

Sacramento Municipal Utility District (SMUD), the licensee, holds Materials License SNM–2510 for receipt and storage of spent fuel from the Rancho Seco Nuclear Generating Station at an Independent Spent Fuel Storage Installation (ISFSI) located on the Rancho Seco Nuclear Generating Station site. The facility is located in Sacramento County, California.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR Part 72 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Section 72.72(d) of 10 CFR Part 72 requires each licensee to keep duplicate records of spent fuel and high-level radioactive waste in storage. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. The applicant stated that, pursuant to 10 CFR 72.140(d), the Rancho Seco Quality Manual (RSQM) will be used to satisfy the Quality Assurance (QA) requirements for the ISFSI. The RSQM states that QA records are maintained 2 in accordance with commitments to ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974. ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974 allow for the storage of QA records in a duplicate storage location sufficiently remote from the original records or in a single record storage facility subject to certain provisions designed to protect the records from fire and other adverse conditions. The applicant seeks to streamline and standardize recordkeeping procedures and processes for the Rancho Seco Nuclear Generating Station and ISFSI spent fuel records. The applicant states that requiring a separate method of record storage for ISFSI records diverts resources unnecessarily.

ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974 provide requirements for the protection of nuclear power plant QA records against degradation. They specify design requirements for use in the construction of record storage facilities when use of a single storage facility is desired. They include specific requirements for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI/ASME NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88, "Collection, Storage and Maintenance of Nuclear Power Plant Quality Assurance Records," as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974 also satisfy the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

III

By letter dated December 13, 2000, SMUD requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that "Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records." The applicant proposes to maintain a single set of spent fuel records in storage at a record facility that satisfies the requirements set forth in ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974.

IV

The staff considered the applicant's request and determined that granting the proposed exemption from the requirements of 10 CFR 72.72(d) is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The staff grants the exemption, subject to the following conditions:

(1) SMUD may maintain records of spent fuel and high-level radioactive waste in storage either in duplicate as required by 10 CFR 72.72(d), or alternatively, a single set of records may be maintained at a record storage facility that satisfies the standards set forth in ANSI/ASME, NQA–1–1983, Supplement 17S–1 and ANSI N45.2.9–1974.

(2) All other requirements of 10 CFR 72.72(d) shall be met.

The documents related to this proposed action are available for public inspection and for copying (for a fee) at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at http://www.nrc.gov/NRC/ADAMS/index.html (the Public Electronic Reading Room).

Pursuant to 10 CFR 51.35, NRC has published its finding that granting this exemption will have no significant impact on the quality of the human environment in the **Federal Register** (66 FR 11610).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of March 2001.

For The Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–7354 Filed 3–23–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Yankee Atomic Electric Company; Notice of Consideration of Issuance of Amendment to Facility Possession-Only License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Possession-Only License No. DPR–3 issued to Yankee Atomic Electric Company (YAEC) for possession of the Yankee Nuclear Power Station (YNPS) located in Rowe, Massachusetts.

The proposed amendment would allow changes to the security plan to include the new Independent Spent Fuel Storage Installation (ISFSI).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment to the security plan provides the basis for establishing security functions necessary to implement appropriate security/safeguards measures for the YNPS ISFSI. As such, the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Based on the details presented in the safety analysis, the proposed amendment to the security plan, which incorporates ISFSI security functions, does not reduce the ability of the security organization to prevent radiological sabotage and therefore does not increase the probability or consequences of a radiological release previously evaluated. The proposed security plan changes will not affect any important to safety systems or components, their mode of operation or operating strategies. The proposed security plan changes have no affect on accident initiators or mitigation. The physical protection systems described in the ISFSI security plan are designed to protect against the loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose as described in 10 CFR 72.106. Therefore, the proposed amendment to the security plan will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. Based on the details presented in the safety analysis, the proposed amendment to the security plan incorporating ISFSI security functions does not affect the operation of systems important to safety. The security plan amendment does not affect any of the parameters or conditions that could contribute to the initiation of any accident. No new accident scenarios are created as a result of security plan changes requested to incorporate the ISFSI security functions. In addition, the design functions of equipment important to safety are not altered as a result of the proposed security plan changes. The physical protection systems described in the ISFSI security plan are described to protect against the loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose as described in 10 CFR 72.106. Therefore, the proposed security plan changes will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. Based on the details presented in the safety analysis, implementation of the proposed amendment to the security plan incorporating ISFSI security functions will not reduce a margin of safety as detailed in the Technical Specifications as there are no Technical Specification requirements associated with the physical security system. Specifically, the proposed changes to the security plan do not represent a change in initial conditions, system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed amendment to the security plan does not reduce the effectiveness of any security or safeguards measures currently in place at YNPS. The physical protection systems described in the ISFSI security plan are designed to protect against the loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose as described in 10 CFR 72.106.

Therefore, the proposed security plan changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 25, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Robert K. Gad, III, Esq., Ropes and Gray, One International Place, Boston, MA 02110–2624, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 12, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 20th day of March 2001.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–7353 Filed 3–23–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting.

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 26, April 2, 9, 16, 23, 30, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of March 26, 2001

There are no meetings scheduled for the week of March 26, 2001.

Week of April 2, 2001—Tentative

There are no meetings scheduled for the week of April 2, 2001.

Week of April 9, 2001—Tentative

Monday, April 9, 2001

1:30 p.m.—Briefing on 10 CFR Part 71 Rulemaking (Public Meeting) (Contacts: Naiem Tanious, 301–415–6103; David Pstrak, 301–415–8486)

Tuesday, April 10, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed)

10:30 a.m.—Meeting on Rulemaking and Guidance Development for Uranium Recovery Industry (Public Meeting) (Contact: Michael Layton, 301–415–6676)

Week of April 16, 2001—Tentative

There are no meetings scheduled for the week of April 16, 2001.

Week of April 23, 2001—Tentative

Tuesday, April 24, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed)

10:30 a.m.—Discussion of Intragovernmental issues (Closed–Ex. 9)

Week of April 30, 2001—Tentative

There are no meetings scheduled for the week of April 30, 2001.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. contact person for more information: david Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: March 22, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–7503 Filed 3–22–01; 12:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Rosemary Bassilakis and Deborah Katz (Petitioners) of the Citizens Awareness Network, dated September 26, 2000, with regard to the operation of the Connecticut Yankee Atomic Power Company's (CYAPCO's or the licensee's) Haddam Neck Plant (Haddam Neck). The Petition was supplemented by the Petition Review Board's (PRB) October 10, 2000, transcript.

The Petition requested that the Nuclear Regulatory Commission (NRC or the Commission) (1) Conduct a full investigation of CYAPCO's garment laundering practices and specifically of the September 20, 2000, incident at a public laundry facility in which the Petitioners contend that the licensee may have laundered radioactively contaminated clothing; (2) revoke CYAPCO's license, or suspend it until an investigation is completed and any contamination found as a result of that investigation is remediated; (3) report any violation of regulations to the Department of Justice; and (4) conduct an informal public hearing.

As the basis for the September 26, 2000, request, the Petitioners raised concerns stemming from a September 20, 2000, incident in which CYAPCO laundered bright yellow coveralls, rubber boots, and gloves at a public laundromat in East Hampton, Connecticut. The Petition contends that, although it is not clear whether or not the garments were radioactively contaminated, "Laundering the Haddam Neck reactor's protective garments at a public facility constitutes a serious loss of radiological control, and blatant disregard for public and worker health and safety, the environment, and NRC rules and regulations."

The Petitioners addressed the Petition Review Board (PRB) on October 10, 2000, in a telephone conference call to clarify the basis for the Petition. The transcript of this discussion may be examined, and/or copied for a fee at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The transcript (ADAMS Accession No.: ML003768237) is also available at the ADAMS Public Library component of the NRC's Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment by letter dated December 19, 2000. The Petitioners responded with comments on January 4, 2001, and the licensee responded on January 5, 2001. These comments and the NRC staff's response to them are Enclosures to the Director's Decision.

Of the four actions requested by the Petitioner, the Director of the Office of Nuclear Reactor Regulation has granted one action (an investigation of the licensee's laundering practices and this incident), granted in principle one action (an informal public hearing), denied one action (suspend or revoke the operating license), and one action (report any violations of regulations to the Department of Justice) became moot because no violations were identified. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–01–02), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

The issues raised in the September 26, 2000, Petition have been resolved. Inspection efforts conducted by NRC in response to the Petition determined that protective clothing at the licensee's training facility was free from radioactive contamination. Furthermore, the NRC inspection report concluded that effective controls were in place to assure that training garments had not and would not become contaminated.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 20th day of March, 20, 2001.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–7351 Filed 3–23–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection; IS–10

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13)and 5 CFR 1320.5 (a)(I)(iv), this notice announces that OPM has submitted to the Office of Management and Budget, a request for clearance of a revised information collection. The Mail Reinterview Form, IS–10, is completed by individuals who have been interviewed by a contract investigator during the course of a personnel investigation. This form, a quality assurance instrument, asks questions regarding the performance of the investigator.

We estimate that 5700 forms are completed annually. Each form requires approximately 6 minutes to complete. The annual estimated burden is 570 hours.

For copies of this proposal contact Mary Beth Smith-Toomey at (202) 606–8358 or fax (202) 418–3251 or by e-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before April 25, 2001.

ADDRESSES: Send or deliver written comments to:

Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, Room 5416, 1900 E Street NW., Washington, DC 20415–4000,

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory

Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–7385 Filed 3–23–01; 8:45 am]

BILLING CODE 6325–40–P

POSTAL RATE COMMISSION

[Docket No. C2001–1; Order No. 1307]

Notice and Order on Complaint Concerning Sunday and Holiday Mail Collections

AGENCY: Postal Rate Commission.

ACTION: Notice and order on complaint docket no. C2000–1.

SUMMARY: This document addresses a complaint and related motion practice concerning Sunday and holiday mail collections. It established deadlines for certain actions. It also addresses other aspects of the filing.

DATES: Notice and order issued March 20, 2001; complainant's filing due April 3, 2001; participants' responses due April 10, 2001.

ADDRESSES: Send filings to the attention of Steven W. Williams, acting secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Authority to Consider the Complaint 39 U.S.C. 3662

Background

On October 27, 2000, Douglas F. Carlson filed a complaint with the Commission pursuant to 39 U.S.C. 3662, rate and service complaints, alleging that the Postal Service has made changes to the nature of mail service without first seeking an advisory opinion from the Commission as required by section 3661(b).[1] He alleges that the Postal Service has made changes to the nature of mail service on either a nationwide or a substantially nationwide basis by eliminating: (1) Sunday collection and processing of outgoing First-Class Mail; (2) processing of outgoing First-Class Mail on several holidays; and (3) normal mail collections on Christmas eve and possibly on New Year's eve. As a second basis to sustain his section 3662 complaint, Carlson further alleges that the current level of Sunday, holiday, Christmas eve, and New Year's eve service does not conform to the requirements delineated in the Postal Service's postal operations manual (POM).

Carlson requests that the Commission issue a public report documenting the alleged Postal Service's noncompliance with collection and outgoing mail processing on Sundays, holidays, Christmas eve, and New Year's eve as delineated in the POM. Furthermore, he requests that the Commission consider conducting a hearing to determine: (1) The extent to which the Postal Service provides collection service on Christmas eve and New Year's eve; (2) the extent to which customers have access to collection and processing of outgoing First-Class Mail on holidays; and (3) whether the Postal Service provides adequate postal services within the meaning of section 3661(a) when customers do not have access to outgoing First-Class Mail service on Sundays, holidays, or for any two consecutive days.

Postal Service Answer and Motion to Dismiss

On November 27, 2000, the Postal Service filed an answer to the Complaint concurrent with a motion to dismiss.[2] The answer demonstrates considerable agreement as to the events that have occurred, but disagreement in interpreting these events as they relate to the requirements of the Postal Service. Procedurally important, the Postal Service acknowledges that it did not seek advisory opinions for any of the three service changes alleged by Carlson. The facts that follow briefly describe the Postal Service's position on Sunday, holiday, and holiday eve service, and the significance of the POM.

The Postal Service admits that Sunday collection and outgoing mail processing were eliminated effective February 14, 1988. The Service specifically denies that an advisory opinion was required to take this action. The Service acknowledges that this policy change was never incorporated into the POM. However, the Service states that the POM is in the process of being amended to reflect the current policy.

The POM discusses Sunday and holiday collections "to ensure that the mail will connect with dispatches of value * * *." Specifically for Sunday collections, the Postal Service alleges that there are no longer dispatches of value because outgoing mail processing does not occur on Sundays. Therefore, the Postal Service infers that the POM does not require Sunday collections. Answer at 4–12.

The Service concedes that in the 1970s and early 1980s it tended to do more processing of outgoing mail on holidays than it does now. The Service states that collection and outgoing mail processing tend not to be done on several widely observed holidays, and outgoing mail processing is now rare on Christmas day and New Year's day. However, the Service denies outgoing mail processing has been phased out over time. If a holiday occurs on a Monday, the Service admits that there may be two consecutive days without collections or outgoing mail processing.

The Postal Service acknowledges instances of Christmas eve, and possibly New Year's eve, final collections occurring prior to the times posted on the collection boxes, and that customers were not given prior notice that this would happen. However, the Postal Service notes that the POM allows the Service to make exceptions to the specific level of service provided. The Service denies that service exceptions were not granted, as alleged by Carlson.

The Postal Service notes that the POM allows exceptions to be made to holiday and holiday eve service levels. There is evidence that the POM and the Domestic Mail Manual (DMM) exception provisions are in conflict. However, the Service denies the allegation that the provisions in the POM control the provisions in the DMM. The Postal Service also contends that the POM is not intended to be relied upon by the general public.

The Postal Service separately discusses allegations of providing service inconsistent with the POM, Sunday collections, and holiday and holiday eve collections as part of the motion to dismiss as allowed by rule 84(b)–(c). The Service first states that the provisions of the POM "are not necessarily commensurate with the policies of the [Postal Reorganization] Act." It then asserts that the complaint fails to allege that the complainant is not receiving postal services in accordance with the policies of title 39. From this, the Postal Service concludes that the allegations regarding the POM are outside the scope of section 3662 and should be dismissed. In conjunction with the above argument, the Postal Service argues that the Commission lacks jurisdiction to entertain a complaint, such as the instant complaint, which does not allege that

[1] Douglas F. Carlson complaint on Sunday and holiday collections, filed October 27, 2000 (complaint).

[2] Answer of the United States Postal Service and motion to dismiss, filed November 27, 2000 (answer).

the service provided is not in accordance with the policies of title 39.[3] Answer at 12–13.

The Postal Service indicates that it is amending the POM to eliminate the discrepancies from actual practice cited in the complaint. Thus, there is no need to pursue analysis of this situation because it will soon cease to exist. The Postal Service alleges that the complaint overstates the significance of the POM provisions cited by blurring the distinction between collection and mail processing. Furthermore, the complaint does not cite any provision of the POM that mandates a level of outgoing mail processing on Sundays, holidays, Christmas eve and New Year's eve. Id. at 13–14.

The Postal Service requests that the Commission dismiss the portions of the complaint regarding the elimination in 1988 of Sunday collections and outgoing mail processing. The Service argues that common sense principles of equity and laches suggest that 13 years is an inordinate amount of time to wait before bringing this matter before the Commission. It summarizes that there would be no practical utility in reviewing this history at this time. In addition, the Service argues that its actions were reasonable under the circumstances, and its ability to expediently comply with the Omnibus Budget Reconciliation Act of 1987 (OBRA) legislation with the least possible harm to the mailing public would have been frustrated by first having to seek an advisory opinion. Id. at 14–16.

The Postal Service argues that the holiday and holiday eve collection issues are generally temporary and local in nature, and do not rise to the level of a nationwide change in service. Because this is an "individual, localized, or temporary service issue not on a substantially nationwide basis," the Service concludes that this issue should not be considered by the Commission and thus, dismissed. Furthermore, the Service states that it needs the latitude to assess local conditions and adjust its operations accordingly. Id. at 16–18. In summation, the Postal Service concludes that the complaint fails to raise a matter of policy to be considered by the Commission, and, citing the requirements of section 3662, as implemented by rule 82, therefore should be dismissed.

[3] The Service cites PRC order no. 1088 as support for the premise that the Commission lacks jurisdiction to enterain complaints which fail to allege that the service provided is not in accordance with the policies of title 39. In PRC order no. 1088, the Commission ruled that the violation of a criminal statute, 18 U.S.C. 1721, did not fall within the scope of 39 U.S.C. 3662. The Service's interpretation is much broader than what was actually stated in that order. In the instant complaint, the service provided (or not provided), collection and processing of mail, is within the scope of section 3662.

Carlson Motion for Extension of Time

The deadline for filing answers to the Postal Service motion to dismiss passed on December 4, 2000. On December 7, 2000, Carlson filed a motion for extension of time to answer the Postal Service motion.[4] Carlson requested a deadline of December 11, 2000 to serve an answer on the Postal Service, and estimated three additional days for delivery of the associated document. The Carlson response to Postal Service motion to dismiss was subsequently filed on December 14, 2000. The Postal Service does not oppose this request, and the late filing will not prejudice any interested party. The Commission grants the Carlson motion for extension of time in as far as allowing the late filing of the Carlson response.[5]

Carlson Response to Motion to Dismiss

Carlson filed a response in opposition to the motion to dismiss on December 14, 2000.[6] Carlson states that his Complaint is brought pursuant to section 3662 which allows interested parties who believe that they are not receiving postal services in accordance with the policies of title 39 to lodge a complaint with the Commission. He cites the alleged failure of the Postal Service to provide the level of service delineated in the POM and failure of the Postal Service to seek an advisory opinion when changing its policy on collections as the bases for arguing that postal customers are not receiving postal services in accordance with the policies of title 39.

To support his argument based on the POM, Carlson traces the requirements of the Act to the promulgation of the rules and regulations delineated in the POM. From this, Carlson infers that the POM contains the Postal Service's rules and regulations establishing an efficient system of collecting mail. Therefore, he concludes, a customer not receiving collection service as set forth in the POM is not receiving postal services in accordance with the policies of the Act, and may file a complaint. Response at 4–5.

The second basis used by Carlson to show that postal customers may not be receiving postal services in accordance with the policies of title 39 is through an alleged violation of a provision of the Act. Section 3661(b) requires the Postal Service to seek an advisory opinion under specific circumstances when it decides to change the nature of a postal service. If the Postal Service does not request an advisory opinion when required, Carlson concludes that a complaint may be filed. Id at 4–5.

The response also provides rebuttal to many of the allegations made by the Postal Service in the answer. Id at 5–19. This material will not be reviewed here, but will be drawn upon as necessary in the Commission's analysis of the Postal Service motion to dismiss.

Subsequent Motion Practice

The Postal Service filed a motion for leave to reply to alleged misstatements of material fact and an erroneous standard for initiating a proceeding contained in Carlson's answer.[7] This motion is granted. The Postal Service reply was received on December 26, 2000, and will be considered.[8] The USPS Reply contains additional argument on the statutory requirements for initiating a complaint, and on the approximately 12-year delay in initiating a complaint regarding Sunday service. The Postal Service also argues the distinction between the policy of discretion over the level of holiday service and the policy of curtailing holiday service.

[4] Douglas F. Carlson motion for extension of time to respond to Postal Service motion to dismiss, filed December 7, 2000.

[5] Historically, the Commission liberally grants reasonable extensions of time to file documents when no party is prejudiced by such an extension. Recognizing this practice, participants should note that the requirement to observe the "filing date" of a document is an integral part to many of the Commission's rules. Motions for extensions of time that request the Commission to wave a filing date requirement and replace it with a service date requirement, without more, do not adequately reflect the requirements of the Commission's rules. Therefore, in as far as the Carlson motion requests the observance of a service deadline, the motion is denied.

The expected filing date is described in Carlson's motion. This date was met. The Commission will consider the Carlson motion as a motion for extension of time with a requested filing deadline of December 14, 2000.

[6] Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, filed December 14, 2000. Douglas F. Carlson answer in opposition to Postal Service motion to dismiss—erratum, filed December 20, 2000. Douglas F. Carlson answer in opposition to Postal Service motion to dismiss—erratum, filed January 7, 2001. (Response).

[7] Motion of the United States Postal Service for leave to reply to Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, filed December 26, 2000.

[8] Reply of the United States Postal Service to Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, filed December 26, 2000 (USPS reply).

Carlson's final reply was received on January 7, 2001.[9] This reply provides additional argument and reiterates the basis of the complaint. This additional pleading is also accepted and will be considered.

Commission Analysis

This Complaint is brought pursuant to rate and service complaints, 39 U.S.C. 3662. The subject of the complaint is Sunday, holiday, and holiday eve service. It does not involve rate issues, or subchapter II, permanent rates and classes of mail, issues. The applicable part of section 3662 states:

> Interested parties * * * who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe.

39 U.S.C. 3662. Thus, to sustain a complaint, the complainant must show (1) that the complainant is receiving (or not receiving) the service in question, and (2) a belief that the service in question is not in accordance with the policies of the Act.

The Postal Service argues that the complaint fails to allege that the complainant is not receiving postal services in accordance with the policies of the Act. Answer at 12–13. Carlson replies that he has demonstrated a clear belief that he is not receiving the services in question. He states that he is not receiving outgoing mail collection and processing on Sunday, he has given examples of failure to provide holiday outgoing mail processing in an area that he has lived, and he states that the curtailment of holiday eve service could affect anyone traveling through the affected areas. Response at 5–7.

The Commission finds the complaint sufficiently alleges the complainant is not receiving the services in question. Although the Complaint fails to state specifically that Carlson is not receiving the services in question, it is also clear from the complaint that no one, including Carlson, is receiving Sunday collections and outgoing mail processing. The complaint also demonstrates a sufficient personal nexus to the holiday and holiday eve service issues. The holiday service issue allegedly has occurred in an area in which Carlson resided, and the nature of the holiday and holiday eve service issues logically may affect a broad spectrum of mailers, including Carlson. Finally, the allegations surrounding the holiday and holiday eve issues may indicate, upon further examination, that these service issues approach the nationwide magnitude of the Sunday collection and outgoing mail processing allegations, where no mailer is receiving the services in question.

Once the complainant shows that he is receiving (or not receiving) the service in question, he must then demonstrate a belief that the service in question is not in accordance with the policies of the Act. Carlson attempts to demonstrate this belief using two separate arguments. One argument, although loosely based on the Postal Service requirement to develop and promote adequate and efficient postal services, section 3661(a), is more accurately characterized as based on the Postal Service's alleged failure to seek an advisory opinion as required by section 3661(b). The other argument is based on the Postal Service not conforming its actual service practice to the specifications delineated in the POM.

Carlson's argument that the Postal Service's failure to seek an advisory opinion as required by section 3661(b) is sufficient to demonstrate a reasonable belief that the services in question are not in accordance with the policies of the Act is examined first. The question before the Commission in the motion to dismiss becomes whether a section 3662 rate and service complaint is sustainable based upon the Postal Service's alleged failure to follow a procedural provision of the Act, specifically section 3661(b).[10] The Commission has previously stated: "[T]o the extent that the section 3662 complaint mechanism has been viewed as a remedial supplement to the review of substantially nationwide service changes required under section 3661, consideration of a Postal Service action purportedly in violation of section 3661 in a complaint proceeding appears compatible with the statutory scheme of the Reorganization Act." Order no. 1239 at 14 (footnote omitted). Although that order viewed this contention as a novel approach, the conclusion was that a complaint may be heard on this basis.

The Commission finds that to properly exercise its discretion and hear a complaint under this basis, the section 3662 "belief" that the complainant is not receiving postal services in accordance with the policies of the Act must be reasonable, and not merely a naked assertion. The complainant does not have to "prove" a violation of the statute. An opportunity to develop evidence and make a case is provided if the complaint is heard. In the instant complaint, to determine if the belief is reasonable the Commission must consider whether the complainant has at least made a colorable claim alleging a violation of section 3661(b).[11]

The starting point is a review of the requirements of section 3661(b). Section 3661(b) states:

> When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change.

The statute places the burden upon the Postal Service to determine whether to request an advisory opinion from the Commission when it is contemplating a change to a service. To make this determination, the Postal Service must resolve two factual issues. First, does the change involve a change to the nature of a postal service, and second, does the change generally affect service on a nationwide or substantially nationwide basis? If both factual conditions exist, the Postal Service must submit a proposal requesting an advisory opinion from the Commission, prior to the effective date of such proposal.

The pleadings show that the Postal Service has not requested an advisory opinion on alleged changes to either Sunday, holiday or holiday eve service. The Postal Service admits to the elimination of Sunday collection and outgoing mail processing. This arguably rises to the level of a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis."

Carlson and the Postal Service differ on whether the holiday and holiday eve service concerns rise to the level of a change in the nature of a postal service, or of the nationwide or substantially nationwide applicability of the actual service levels. The Postal Service raises a factual dispute as to whether local offices are exercising discretion on holiday and holiday eve service levels

[9] Douglas F. Carlson response to Postal Service reply to answer in opposition to motion to dismiss, filed January 7, 2001 (Carlson reply).

[10] A purpose of section 3661(b) is to provide the opportunity for public input to inform a review of the policy requirement that "the Postal Service shall develop and promote adequate and efficient postal services," section 3661(a), whenever the Postal Service seeks to change the nature of a postal service which will generally affect the service on a nationwide or substantially nationwide basis.

[11] The Commission finds that a colorable claim standard is appropriate to screen out complaints without merit. A higher standard would not be appropriate because it may require the Commission to hear evidence on the complaint prior to ruling on the initial motion to dismiss. In many cases, such a ruling may also be conclusive as to the outcome of the complaint.

or, as Carlson alleges, it has in fact instituted a de facto policy change in the nature of a postal service. There is also disagreement as to the nationwide or substantially nationwide applicability of Carlson's allegations. In the opinion of the Commission, Carlson has provided sufficient basis to make a colorable claim as to whether the Postal Service should have requested an advisory opinion pursuant to section 3661(b). Because Carlson has made a colorable claim of a substantially nationwide change in service, the Complaint is sustainable on this basis.

Carlson's second argument, based on the POM, attempts to establish a direct relationship between the POM and the policies of the Act. To summarize, Carlson alleges that the provisions of the POM flow from the policies of the Act. Therefore, if the Postal Service is not providing the level of service delineated in the POM, it is not providing the level of service required by the policies of the Act. Separately for each service in question, he alleges that the Postal Service is not providing the level of service delineated in the POM. Therefore, he concludes, the Postal Service is failing to provide the level of service that the policies of the Act require. The Postal Service argues that the provisions of the POM are not necessarily commensurate with the policies of the Act. For this reason, including the contention that Carlson did not allege that he was not receiving the services in question (discussed above), the Postal Service argues that the Complaint should be dismissed. Answer at 12.

The Commission generally concurs with the Postal Service that various provisions of the POM may not necessarily rise to the level of interpreting or implementing a policy of the Act. The significance of the POM in relation to the policies of the Act can only be determined after examining the specific provisions of the POM and the related policies of the Act, in conjunction with the surrounding facts of the allegation. The Commission is not attempting to diminish the significance of the POM, but only trying to put its significance in proper perspective. There are many instances where examining the POM could provide valuable insight into the Postal Service's interpretation of a specific policy of the Act. The Postal Service providing service inconsistent with provisions of the POM is not conclusive to answering whether the Postal Service is providing service inconsistent with the policies of the Act.

However, as described above, the Complainant demonstrates a reasonable belief that the service in question is not in accordance with the policies of the Act. The failure to obtain an advisory opinion, when required by section 3661(b), indicates that the service in question might not be in accordance with the policies of the Act. Once a party has demonstrated a proper basis for bringing a complaint, the Commission is given discretion on whether or not to hear the complaint. The statute simply states: "The Commission may in its discretion hold hearings on such complaint." 39 U.S.C. 3662.

The Commission adopted a rule to guide it in determining when to apply its discretion to hold hearings, as granted in section 3662, which states in part:

> The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

39 CFR 3001.82. This empowers the Commission to entertain complaints raising rate and service issues that contravene the policies of title 39 and that have nationwide implications. The Commission generally considers that the following types of complaints are not a matter of policy that have nationwide implications and thus, will not be entertained: (1) Whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user, or (2) complaints with regard to an individual, localized, or temporary service issue.

Carlson's allegations, if proven, certainly may rise to the level of clearly contravening the policies of title 39. The level of service issues have substantially nationwide implications. The Sunday service issue occurs on a nationwide and not on an individual, localized, or temporary basis. Finally, there is a sufficient allegation that the holiday and holiday eve service issues may occur at least on a substantially nationwide basis and are not localized or temporary in nature. Rule 82 does not provide sufficient cause to dismiss this complaint. However, the Commission will exercise its prerogative and examine other factors to determine whether to exercise discretion to hear various aspects of the instant complaint.

Commission's Discretion on the Sunday Service Issue

The Postal Service presents three arguments for dismissing the Sunday service section of the complaint that the Commission considers in exercising its discretion on whether to hear this portion of the complaint. The Service states that more than 12 years have passed since it eliminated Sunday collections and outgoing mail processing. Because such a long time has passed, the Postal Service argues that equity and laches dictate that the Commission should exercise its discretion and dismiss this part of the complaint. Second, the Postal Service alleges that it acted reasonably under the circumstances. The Service states that it had to rapidly respond to the requirements of the OBRA in a way that would cause the least inconvenience to the mailing public. Thus, an advisory opinion would have been a meaningless gesture. Therefore, this section of the complaint should be dismissed. Finally, the Service argues that the complaint should be dismissed because there is no practical purpose to dredging up ancient history. Answer at 14–16.

Carlson succinctly states that the Postal Service has provided no legal authority in support of its decision to bypass the requirements of section 3661(b). Carlson reply at 18. The Commission agrees. Eliminating one cut of the possible seven days for collection and mail processing reduces mail service, and this appears to be a change in the nature of a postal service.[12] The effect that this has had on postal customers can only be speculated. The level of service change has unquestionably occurred at the national level. The statute does not provide for exceptions to seeking an advisory opinion, and in fact contemplates that changes may be made before the section 3661 proceeding is concluded. Therefore, the Commission must conclude that the Postal Service was required, but failed, to seek an advisory opinion as required by section 3661(b)

[12] There is no bright line for determining when a reduction in collection and mail processing service is a change in the nature of a postal service. A one out of seven day reduction appears to be a substantial reduction. However, the Commission recognizes the possibility that the Postal Service might have been able to show that this reduction had only a minor impact on the actual nature of the postal service. A timely and properly instituted section 3661(b) proceeding would have allowed for public participation and the development of a record on the impact that this change would have on mailers. If the impact was more substantial than first assumed by the Service, alternatives to comply with the OBRA could have been considered.

prior to implementing this change in the level of Sunday service.

However, the Postal Service's failure to seek an advisory opinion is not the only consideration. The Commission agrees with the Postal Service argument that there is no practical benefit to reviewing a policy change that occurred more than 12 years ago. There is little relevance in discussing the impact that this service change would have on mailers, when mailers have been operating under this level of service for more than 12 years.[13] Carlson does not allege any benefit to reinstituting 7-day a week collection and mail processing, nor does he allege any detriment caused by the current 6-day a week collection and mail processing service level. Furthermore, the Commission is not aware of any timely anecdotal or mailer initiated discussions concerning the sufficiency of the current level of service. For these reasons, the Commission shall exercise its discretion and grant the Postal Service motion to dismiss in the area of Sunday service.

Commission's Discretion Concerning the POM

Carlson makes a logical argument that relates the provisions contained in the POM to the policy requirements of the Act—up to a point. The persuasiveness of the argument becomes weak in two areas. First, Carlson's argument does not account for the relationship between the Postal Service and the Commission. This relationship is similar to a partnership. Each partner has explicit responsibilities of their own, plus a vast area of responsibilities that both partners share to some varying degree. The POM is a Postal Service generated and maintained document. It is an "internal" document to the extent that the POM is used by the Postal Service to explain its policies, regulations or procedures to its employees.[14]

Second, failure to follow a provision of the POM is not per se conclusive in determining that the Postal Service has failed to follow a policy of the Act. There are provisions of the POM that may be very significant in relation to the policies of the Act. The procedure contained in Discontinuance of Post Offices, section 123.6, is an example of a provision that has a strong relationship with the policies of the Act. Other provisions have varying degrees of significance. A determination of a provision's significance requires a thorough examination of the specific POM provision, the specific policy requirement, and the surrounding facts of the specific case.

However, focusing on the POM, in this case, may do little more than highlight inconsistencies between a Postal Service document, and actual policy and practice. A more prudent focus would be on the sufficiency of the Postal Service's actual policies and practice.

The POM is often useful to explain how an actual Postal Service policy, regulation or procedure relates to provisions of the Act. The POM may be used as evidence of the Postal Service's intent, interpretation or implementation of that policy, regulation or procedure. The Postal Service needlessly places itself in a precarious position when an internal manual, such as the POM, and the actual Postal Service policy or procedure, do not correspond. This may require the Postal Service to explain its actual policy, regulation or procedure, and why the actual policy, regulation or procedure does not correspond to its written documentation.

Commission's Discretion Concerning Holiday and Holiday Eve Service

What remains of the instant complaint are the holiday and holiday eve service issues based on the Postal Service's alleged failure to seek an advisory opinion as required by section 3661(b). The determination that Carlson has at least made a colorable claim that the Postal Service has violated section 3661(b) is discussed above. This allowed the section 3662 complaint to proceed to this stage. The remaining determination is whether the Commission will exercise its discretion to hear this portion of the complaint.

As a preliminary matter, the Commission considers whether the Postal Service policy on holiday and holiday eve service levels is clear and understandable, or is it likely to cause confusion to the mailing public. It may reasonably be argued that the policies of the Act include the requirement that the public be adequately and clearly informed of what postal services are available, and also of when existing services are to be discontinued. At this point in the proceeding, the Commission does not have an adequate record describing the Postal Service policy as to holiday and holiday eve service, and as to whether that policy has recently been changed. The existing policy may be ambiguous, and possibly confusing to the mailing public. Complainant should be given the opportunity to fully develop a record on this issue. Therefore, the Commission denies the Postal Service request to dismiss this portion of the complaint.

Because the Commission has decided to hear this portion of this complaint, the final section of section 3662 provides direction as to the appropriate course of action. It states,

> If a matter not covered by subchapter II of this chapter is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.

39 U.S.C. 3662. This statement applies to all section 3662 issues that are not related to permanent rates and classifications. It directs the Commission to hold hearings of an unspecified degree of formality. See 39 CFR 3001.85–86. Section 3662 acts to limit the authority of the Commission to rendering a public report to the Postal Service on its findings. Further, it allows the Postal Service the discretion to take such action as it deems appropriate on the findings in the public report.

Although the Commission has agreed to hear this portion of the complaint, it finds it necessary to frame the issues in such a way to ensure that an adequate record will be developed. This is done to increase the probability that a final report will be beneficial to the Postal Service, the Complainant, and the mailing public.

The Commission would like to determine whether current Postal Service policy is clear, concise, and not deceptive to the mailing public. The first issue that the Commission would like to resolve is whether postal customers are adequately informed when the Postal Service temporarily or permanently modifies its holiday and holiday eve collection and mail processing schedules. This includes the issue of mail collections occurring prior to the time indicated on the collection receptacle. Accurately informing the mailing public of Postal Service policy is important. The failure to accurately inform the public of a policy has the potential to rise to a failure or denial to provide a particular service.

The second issue is to determine the actual Postal Service policy on holiday and holiday eve collection and mail processing. This includes an examination of the Postal Service's alleged policy of "exceptions" or "discretion" and whether the exception, or frequent use of discretion, has effectively changed stated policy. The

[13] The passage of time may properly be considered in exercising discretion to hear a service related complaint. In contrast, the passage of time would have considerably less influence on a rate-related complaint where the complainant alleged that a rate is "illegal," because the passage of time would be unlikely to cure the illegal rate.

[14] The term "internal" is not meant to infer that the POM is in any way privileged, or cannot be used as evidence of a Postal Service policy, regulation or procedure.

exceptions or discretion topic also should include exploration of what are the decision-making criteria, and at what levels are the decisions implemented at, i.e., national, regional, local, or facility specific. Discussion of all issues will be aided by developing a record of the historical trends that have occurred in holiday and holiday eve service levels.

The Commission does not contemplate consideration at this time of whether the level of holiday and holiday eve service is adequate under section 3661(a). Carlson has not made a specific allegation that these service levels are not adequate. As with the Sunday service issue, the Commission is not aware of any timely anecdotal or mailer initiated discussions concerning the sufficiency of the current level of service. However, the complainant will be given the opportunity to modify his complaint and make this allegation if he is going to enter evidence in support of an allegation that holiday and holiday eve service levels are not adequate. This opportunity is granted to curtail the possibility of a future complaint that would necessarily cover much of the same territory that will be covered in the instant complaint.

The burden is on the complainant to go forward with the case. The first action that must occur is for the complainant to inform the Commission of the time required to develop his case. This includes several items. First, the complainant shall inform the Commission if he is going to modify his complaint, as stated above, and if so, the date when this filing will be made. Second, the complainant shall state the number of days requested for discovery. Third, the complainant shall indicate the nature of the presentation he expects to make in support of this complaint. The complainant shall provide the Commission with the information requested by April 3, 2001. At this time, the complainant should submit any other requests for time along with a description of the contemplated task. Other participants may respond regarding this filing by April 10, 2001.

Representation of the General Public

In conformance with 39 U.S.C. 3624(a), the Commission designates Ted P. Gerarden, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, when requested, will supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by rule 10(d). 39 CFR. 3001.10(d).

Ordering Paragraphs

It is ordered:

1. The unopposed Douglas F. Carlson motion for extension of time to respond to Postal Service motion to dismiss, filed December 7, 2000, is granted.

2. The unopposed motion of the United States Postal Service for leave to reply to Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, filed December 26, 2000, is granted.

3. The motion to dismiss included with the answer of the United States Postal Service and motion to dismiss, filed November 27, 2000, is granted in part, and denied in part, consistent with the body of this ruling.

4. The Carlson filing providing the information requested in the body of this ruling concerning going forward with this case is due by April 3, 2001. Other participants may respond regarding this filing by April 10, 2001.

5. Ted P. Gerarden, director of the office of the consumer advocate, is designated to represent the general public in this proceeding.

6. The acting secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–7439 Filed 3–23–01; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24895; 812–2440]

Lindner Investments and Lindner Asset Management, Inc.; Notice of Application

March 20, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for exemption from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: The requested order would permit certain registered management investment companies to invest uninvested cash in an affiliated money market fund in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Lindner Investments ("Trust") and Linder Asset Management, Inc. ("Adviser").

FILING DATES: The application was filed on February 7, 2001 and amended on March 9, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 16, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 7711 Carondelet, Suite 700, St. Louis, MO 63105.

FOR FURTHER INFORMATION CONTACT: Nadya, B. Roytblat, Assistant Director, at (202) 942–0693 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust currently offers six portfolios (together with any registered open-end management investment company or series thereof that is advised by the Adviser, the "Funds"), including the Lindner Government Money Market Fund (together with any future Fund that is a money market fund and complies with rule 2a–7 under the

Act, the "Money Market Fund").[1] The Money Market Fund complies with rule 2a–7 under the Act. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940.[2] The Adviser serve as the investment adviser for the Funds.

2. Applicants state that each Participating Fund (as defined below) has, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. A Fund that purchases shares of the Money Market Fund is referred to as a Participating Fund.

3. Applicants request an order to permit each of the Participating Funds to invest their Uninvested Cash in the Money Market Fund, and to permit the Money Market Fund to sell shares to, and redeem shares from, the Participating Funds. Investments of Uninvested Cash in shares of the Money Market Fund will be made only to the extent that such investment is consistent with each Participating Fund's investment restrictions and policies as set forth in the Participating Fund's prospectus and statement of additional information. Applicants state that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Participating Funds to invest Uninvested Cash in the Money Market Fund.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because the Money Market Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over the Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Fund sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules). Applicants represent in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the investment company and any investment adviser to the investment company. Applicants state that, because the Funds share a common board of directors, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. As a result, section 17(a) would prohibit the sale of the shares of the Money Market Fund to the Participating Funds, and the redemption of the shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Fund by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Fund will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest their Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that the Money Market Fund has the right to discontinue selling shares to any of the Participating Funds if the Money Market Fund's board of directors determines that such sale would adversely affect its portfolio management or operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any company participates. Applicants state that each Participating Fund, by purchasing shares of the Money Market Fund, the Adviser, by managing the assets of the Participating Funds investing in the Money Market Fund, and the Money Market Fund, by selling shares to the Participating Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the

[1] Any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] For purposes of this application, the term "Adviser" includes, in addition to Lindner Asset Management, Inc., any other person controlling, controlled by or under common control with Lindner Asset Management, Inc. that acts in the future as an investment adviser to a Fund.

proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of the Money Market Fund would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Fund sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. Before the next meeting of the board of directors of the Participating Funds ("Board") is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the participating Fund that can be expected to be invested in the Money Market Fund. Before approving any advisory contract for a Participating Fund, the Board of the Participating Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Fund. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Money Market Fund only to the extent that the Participating Fund's aggregate investment in the Money Market Fund does not exceed 25 percent of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Fund will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in the prospectus and statement of additional information.

5. Each Participation Fund and the Money Market Fund that may rely on the order will be advised by the Adviser.

6. The Money Market Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–7374 Filed 3–23–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 24

This document replaces and supercedes "Line of Succession Designation No. 1–A, Revision 23."

Line of Succession Designation No. 1–A, Revision 24

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) If I am absent from the office, I hereby designate the officials in listed order below to serve as Acting Administrator with full authority to perform all acts and functions which the Administrator is authorized to perform:

(1) Acting Chief of Staff;

(2) Acting Associate Deputy Administrator for Management and Administration;

(3) Acting Associate Deputy Administrator for Entrepreneurial Development; and

(4) Acting General Counsel.

(b) An individual serving in an acting capacity in any of the positions listed in paragraph (a) but not acting by designation of the Administrator is not also included in this Line of Succession. Instead, the next official on the list shall serve as Acting Administrator.

(c) This designation shall remain in full force and effect until revoked or superceded in writing by the Administrator.

(d) Serving as Acting Administrator has no effect on the officials listed in paragraph (a), above, with respect to their current authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: March 16, 2001.

John D. Whitmore,

Acting Administrator.

[FR Doc. 01–7438 Filed 3–23–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request, Comment Request and Notice of OMB Approval of an Information Collection Contained in a Regulation

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. In addition, SSA is announcing OMB's approval of an information collection contained in regulation.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

(SSA), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235–6401

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. *Waiver of Your Right to Personal Appearance before an Administrative Law Judge*—0960–NEW. Each claimant has a statutory right to appear in person

(or through a representative) and present evidence about his/her claim at a hearing before an Administrative Law Judge (ALJ). If a claimant wishes to waive his/her statutory right to appear before an ALJ, he/she must complete a written request. The claimant may use Form HA–4608 for this request. The information collected is used to document an individual's claim to show that an oral hearing is not preferred in the appellate process. The respondents are applicants for Social Security and Supplemental Security Income benefits who request a hearing.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 400 hours.

2. *Request for Hearing*—0960–0269. The information collected on Form HA–501 is used by the Social Security Administration (SSA) to process a request for hearing on an unfavorable determination of entitlement or eligibility to benefits administered by SSA. The respondents are individuals whose claims for benefits are denied and who request a hearing on the denial.

Number of Respondents: 553,400.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 92,233 hours.

3. *Student's Statement Regarding Resumption of School Attendance*—0960–0143. The information on Form SSA–1386 is used by SSA to verify full-time attendance at educational institutions and to determine eligibility for student benefits. The respondents are student beneficiaries currently receiving SSA benefits.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 13,300 hours.

4. *Subpoena—Disability Hearing*—0960–0428. The information on Form SSA–1272–U4 is used by SSA to subpoena evidence or testimony needed at disability hearings. The respondents are comprised of officers from Federal and State DDSs.

Number of Respondents: 36.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 18 hours.

5. *Notification of Projected Completion Date*—0960–0429. Form SSA–891 is used by SSA and State Disability Determination Services (DDS) to inform disability hearing units whenever a hearing case will not be completed and forwarded to the hearing unit as expected. This information is necessary to enable the hearing units to schedule hearings as promptly and efficiently as possible. The respondents are State DDS and SSA components that make disability determinations for the Agency.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8 hours.

6. *Real Property Current Market Value Estimate*—0960–0471. This form is used to obtain current market value estimates of real property owned by applicants for, or beneficiaries of, Supplemental Security Income (SSI) benefits (or a person whose resources are deemed to such an individual). The value of an individual's resources, including non-home real property is one of the eligibility requirements for SSI benefits. The respondents are individuals with knowledge of local real property values.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 1,813 hours.

7. *Information about Joint Checking/Savings Account*—0960–0461. Form SSA–2574 is used to collect information from the claimant and the other account holder(s) when a Supplemental Security Income (SSI) applicant/recipient objects to the assumption that he/she owns all or part of the funds in a joint account bearing his or her name. These statements of ownership are required to determine whether the account is a resource of the SSI claimant. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

8. *Response to Notice of Revised Determination*—0960–0347. Form SSA–765 is used by claimants to request a disability hearing and/or to submit additional evidence before a revised reconsideration determination is issued. The respondents are claimants who file for a disability hearing in response to a notice of revised determination for disability insurance and/or SSI under titles II (Old-Age, Survivors and Disability Insurance) and XVI (Supplemental Security Income).

Number of Respondents: 1,925.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 963 hours.

9. *Function Report, Child* (Birth to 1st (form SSA–3375), Age 1 to 3rd (form SSA–3376), Age 3 to 6th (form SSA–3377), Age 6 to 12th (form SSA–3378), Age 12 to 18th (form SSA–3379) Birthday)—0960–0542. State Agency adjudicative teams use the information gathered on the appropriate version of these forms, in connection with other medical function evidence, to form a complete picture of the child's ability to function. This information assists with determining whether a child is disabled, or each case in which disability cannot be found on medical grounds alone. The respondents are applicants for Title XVI childhood disability benefits, and child caregivers.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 250,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. *Application for Retirement Insurance Benefits*—0960–0007. In order to receive Social Security retirement insurance benefits, an individual must file an application with the Social Security Administration (SSA). The SSA–1 is one application that the Commissioner of Social Security prescribes to meet this requirement. The information that SSA collects will be used to determine entitlement to retirement benefits. The respondents are individuals who choose apply for Social Security retirement insurance.

Number of Respondents: 1,460,692.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 255,621 hours.

2. *Notice Regarding Substitution of Party Upon Death of Claimant*—0960–0288. When a claimant for Social Security or Supplemental Security Income benefits dies while a request for a hearing is pending, the hearing will be dismissed unless an eligible individual makes a written request to SSA showing that he or she would be adversely

affected by the dismissal of the deceased's claim. An individual may satisfy this requirement by completing an HA–539. SSA uses the information collected to document the individual's request to be made a substitute party for a deceased claimant, and to make a decision on whom, if anyone, should become a substitute party for the deceased. The respondents are individuals requesting hearings on behalf of deceased claimants for Social Security benefits.

Number of Respondents: 10,548.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 879 hours.

3. *Report by Former Representative Payee*—0960–0112. When a State mental institution or agency terminates its representative payee services, SSA requires a closeout report on funds held on behalf of Social Security beneficiaries. SSA uses the information, which is collected on form SSA–625, to determine the proper disposition of any conserved funds held by the representative payee. The respondents are State mental institutions or agencies that served as representative payees for Social Security beneficiaries.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 2,000.

4. *State Agency Report of Obligations for SSA Disability Programs and Addendum* (form SSA–4513), *Time Report of Personnel Services for Disability Determination Services* (form SSA–4514), and *State Agency Schedule of Equipment Purchased for SSA Disability Programs* (form SSA–871)—0960–0421. The Social Security Administration uses the information collected on forms SSA–4513 and 4514 to conduct detailed analysis and evaluation of the costs incurred by the State Disability Determination Services (DDS) in making disability determinations for SSA. The data is also used to determine funding levels for each DDS. SSA uses the information collected on form SSA–871 to budget and account for expenditures of funds for equipment purchases by the State DDS that administer the disability determination program. The respondents are DDSs that have the responsibility for making disability determinations for SSA.

	Respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–4513	54	4	90	324
SSA–4514	54	4	90	324
SSA–871	54	4	30	108
Total burden				756

5. *Request for Earning and Benefit Estimate Statement*—0960–0466. Form SSA–7004 is used by members of the public to request information about their Social Security earning records and to get an estimate of their potential benefits. SSA provides information, in response to the request, from the individual's personal Social Security record. The respondents are Social Security numberholders who have covered earnings on record.

Number of Respondents: 3,000,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 250,000 hours.

6. *Certificate of Support*—0960–0001. The information collected by form SSA–760–F4 is used to determine whether the deceased worker provided one-half support required for entitlement to parent's or spouse's benefits. The information will also be used to determine whether the Government pension offset would apply to the applicant's benefit payments. The respondents are parents of deceased workers or spouses who may be subject to Government pension offset.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 4,500 hours.

7. *Request for Waiver of Overpayment Recovery or Change in Repayment Notice*—0960–0037. Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare, Black Lung or Supplemental Security Income overpayments.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 1,000,000 hours.

8. *Reconsideration Report for Disability Cessation*—0960–0350. Form SSA–782–BK is used by claimants and SSA field offices to document new developments on the claimant's condition (as perceived by the claimant), since the prior continuing disability interview was conducted. The form is also used by the SSA interviewer to provide his/her observations of the claimant. The respondents are claimants for Old-Age, Survivors and Disability Insurance and Supplemental Security Income, who file a Request for Reconsideration—Disability Cessation.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 50,000 hours.

III. OMB has approved an information collection published as a final rule at 65 FR 66561. The OMB control number for this information collection is 0960–0501 and the expiration date is February 29, 2004.

Dated: March 15, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–6939 Filed 3–23–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 3602]

60-Day Notice of Proposed Information Collection: DS–71, Affidavit of Identifying Witness (Formerly: DSP–71) OMB # 1405–0088

AGENCY: U.S. Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the

information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Affidavit of Identifying Witness.

Frequency: On Occasion.

Form Number: DS–71.

Respondents: Individuals or Households.

Estimated Number of Respondents: 118,000.

Average Hours Per Response: 1/12 hr. (5 min.).

Total Estimated Burden: 9,833.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW, Room H904, Washington, D.C. 20522, and at 202–663–2460.

Dated: March 16, 2001.

Georgia Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 01–7428 Filed 3–23–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Public Notice #: 3604

Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to P.L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will meet on Tuesday, April 17, 2001, in Room 600, 301 4th St., SW, Washington, D.C. from 9:30 a.m. to 12:00 Noon.

The Commission will discuss the Department's exchange programs, public diplomacy in the Far East, and the Smith-Mundt Act.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

Dated: March 19, 2001.

David J. Kramer,

U.S. Advisory Commission on Public Dipomacy, U.S. Department of State.

[FR Doc. 01–7429 Filed 3–23–01; 8:45 am]

BILLING CODE 4710–11–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Pickwick Reservoir Land Management Plan, Colbert and Lauderdale Counties, AL; Tishomingo County, MS; and Hardin County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA will prepare an Environmental Impact Statement (EIS) on alternatives for management of Pickwick Reservoir project lands in Colbert and Lauderdale Counties in Alabama, Tishomingo County in Mississippi, and Hardin County in Tennessee.

DATES: Comments on the scope of the EIS should be received by June 1, 2001.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov

SUPPLEMENTARY INFORMATION: Pickwick Reservoir is the fourth largest of 23 multipurpose reservoirs operated by TVA for navigation, flood control, power production, recreation, and other uses. Located on the Tennessee River, the reservoir is 53 miles long and extends through parts of four counties in Alabama, Mississippi, and Tennessee. TVA originally acquired 63,625 acres for reservoir construction. Of that, 33,472 acres are covered by water during normal summer pool. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current balance of 17,400 acres of TVA land on Pickwick Reservoir. TVA is considering updating a 1981 land allocation plan and allocating additional lands that were not considered in the 1981 plan. Because of increasing development pressure, the current plan may not reflect current demands for land and may need to be updated to reflect community needs and current TVA policies.

TVA develops reservoir land management plans to help in the management of reservoir properties in its custody. These plans allocate lands to various categories of uses, which are then used to guide the types of activities that will be considered on each tract of land. By providing a clear statement of how TVA intends to manage land and by identifying land for specific uses, TVA hopes to balance conflicting uses and facilitate decision making for use of its land. Each plan is submitted for approval by the TVA Board of Directors and adopted as policy to provide for long-term land stewardship and accomplishment of TVA responsibilities under the 1933 TVA Act. Since 1999, plans have been finalized for the following reservoirs, Boone, Melton Hill, Tellico, and Tims Ford, all in Tennessee. Plans are currently underway for the four Bear Creek Reservoirs, Alabama, Cherokee and Norris Reservoirs, Tennessee; and Guntersville Reservoir, Alabama and Tennessee.

In developing the Pickwick plan, it is anticipated that lands currently committed to a specific use would be allocated to that current use unless there is an overriding need to change. Commitments include transfers, easements, leases, licenses, contracts, utilities, outstanding land rights, or developed recreation areas. All lands under TVA control would be allocated in the planning process. Alternative approaches to land allocation would be analyzed in the EIS. The No Action alternative would continue to rely on the existing 1981 Pickwick Reservoir

Land Management Plan. The 1981 plan allocates land into 16 categories, including natural areas, forest and wildlife management, recreation, and industrial sites. The action alternatives would address options for allocating reservoir lands into seven land use zones. It is anticipated that the majority of the lands would be allocated to natural resource management and sensitive resource protection categories. However, existing uses would be grandfathered by allocating small acreages to industrial and commercial development, recreation, and residential access.

This EIS will tier from TVA's Final EIS, Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley (November 1998). That EIS evaluated alternative policies for managing residential uses along TVA's reservoir system, including Pickwick Reservoir.

This notice publishes the intent of TVA to prepare an EIS for the Pickwick Reservoir Land Management Plan. TVA anticipates that the EIS will include discussion of the potential effects of alternatives on the following resources and issue areas: aquatic ecology, water quality, wetlands, terrestrial ecology, cultural resources, noise, recreation, visual resources, threatened and endangered species, and navigation. Other issues which may be discussed, depending on the potential impacts of the alternatives, include floodplains, prime farmland, and air quality.

Public Participation

TVA is interested in receiving comments on the scope of issues to be addressed in the EIS. The participation of affected Federal, state, and local agencies and Indian tribes, as well as other interested persons is invited. Further, pursuant to the National Historic Preservation Act, TVA is interested in receiving comments on the potential of the proposed land allocation plan to affect historic properties. Written comments on the scope of the EIS should be received on or before June 1, 2001.

Comments may also be provided in an oral or written format at one of the following public meetings:

- Thursday, March 29, 2001, 6 to 8 p.m. CST, Tishomingo County High School, U.S. 72 West, Iuka, Mississippi;
- Tuesday, April 3, 2001, 6 to 8 p.m. CST, Adams Mark Hotel, 939 Ridge Lake Boulevard (Interstate 240 at Poplar Street), Memphis, Tennessee;
- Friday, April 6, 2001, 6 to 8 p.m. CST, Pickwick Landing State Park, Pickwick Dam, Tennessee.
- Thursday, April 12, 2001, 6 to 8 p.m. CST, Environmental Research Center Auditorium, TVA Reservation, Muscle Shoals, Alabama;

Upon consideration of the scoping comments, TVA will develop alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment, and distribute it to commenting agencies and the public. Notice of availability of the draft EIS will be published in the **Federal Register**. Any meetings that are scheduled to receive comments on the draft EIS will be announced by TVA.

Dated: March 20, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 01–7451 Filed 3–23–01; 8:45 am]

BILLING CODE 8120–08–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Intellectual Property Rights; Deadline for Submitting Public Comments on the Suspension of Ukraine, in Whole or in Part, From Eligibility as a GSP Beneficiary Country

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for public comment.

DATES: Final date for comments is April 25, 2001.

SUMMARY: This notice informs the public that the U.S. Government is considering whether to suspend, in whole or in part, duty-free treatment accorded to imports from Ukraine under the U.S. GSP program on the ground that Ukraine has not taken sufficient steps to protect intellectual property rights and sets forth the deadline for submitting comments on products that could be affected.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, USTR Annex, 1724 "F" Street, NW., Room F220, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review are available for public inspection by appointment in the USTR public reading room (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended ("the Trade Act") (19 U.S.C. 2461 *et seq.*). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. Once granted, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. In making this determination, the President must consider several factors, one of which is the extent to which a beneficiary country is providing adequate and effective protection of intellectual property rights (IPR) (19 U.S.C. 2462(c)(5)). Ukraine is a beneficiary of the GSP. In 2000, over $40 million of Ukraine's exports to the United States benefited from GSP. The Annex to this Notice lists products currently being imported under GSP from Ukraine.

I. Suspension of GSP Benefits for Ukraine

In June 1999, the International Intellectual Property Alliance filed a petition for remedial action under the GSP program alleging that Ukraine had failed to provide adequate and effective copyright protection and enforcement to U.S. copyright owners. The petition dealt primarily with the massive production and export of unauthorized compact discs (CDs) in Ukraine, which began after similar operations in Bulgaria were closed in 1999. For over two years the U.S. Government has been urging the Ukrainian Government to close down unauthorized CD production facilities and enact legislation to adequately protect copyrights. The Ukraine Government to date has been unwilling to curtail the activities of these unauthorized facilities. Ukraine has now been designated a "Priority Country" under the "special 301" provision of the Trade Act. The separate GSP review of Ukraine has been ongoing since 1999. In light of the "Priority Country" designation, the U.S. Government is now considering the suspension of Ukraine's GSP benefits.

A. Opportunity for Public Comment

This notice solicits public comments on whether it is appropriate to suspend GSP benefits for Ukraine as well as the effect such suspension would have on Ukraine's exports to the United States. All written comments should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, Annex, 1724 F Street, NW., Room 217, Washington, DC 20508. All submissions must be in English and should conform

to the information requirements of 15 CFR 2007. A party must provide fourteen copies of its comments which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Wednesday, April 25, 2001. Comments received after the deadline will not be accepted.

Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a public version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "nonconfidential").

Jon Rosenbaum,

Assistant USTR for Trade and Development.

BILLING CODE 3190–01–M

ANNEX

GSP IMPORTS - 2000 - VALUES IN DOLLARS
TOP 50 DUTY FREE ITEMS FROM - Ukraine.....RANK : 33

FLAGS	HTSUS	DESCRIPTION	A.V.E.	GSP FREE IMPORTS
	2823.00.00	Titanium oxides	5.5%	$8,722,929
	3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or	6.0%	$8,492,860
	2804.29.00	Rare gases, other than argon	3.7%	$8,112,405
	7202.21.50	Ferrosilicon containing by weight more than 55% but not more than 80% of si	1.5%	$4,327,723
	2850.00.50	Hydrides, nitrides, azides, silicides and borides other than of calcium, ti	3.7%	$1,426,377
	9013.10.30	Telescopic sights for rifles designed for use with infrared light	1.4%	$901,857
	8607.19.03	Parts of railway/tramway locomotives/rolling stock, axles	0.4%	$874,200
	7115.10.00	Platinum catalysts in the form of wire cloth or grill	4.0%	$840,750
	4421.90.98	Articles of wood, nesoi	3.3%	$728,363
	2825.60.00	Germanium oxides and zirconium dioxide	3.7%	$715,570
	1703.90.50	Molasses nesi	0.1%	$683,662
	2849.20.20	Silicon carbide, in grains, or ground, pulverized or refined	0.5%	$562,719
	2203.00.00	Beer made from malt	0.4%	$275,234
	7202.19.10	Ferromanganese containing by weight not more than 1 percent of carbon	2.3%	$274,800
	8112.91.10	Gallium, unwrought; gallium, powders	3.0%	$194,990
	8112.30.60	Germanium, unwrought	2.6%	$166,286
	4104.29.90	Bovine (except buffalo) leather, nesi, and equine leather, w/o hair, pretan	3.3%	$160,261
	1704.90.35	Sugar confections or sweetmeats ready for consumption, not containing cocoa	5.6%	$157,021
	8111.00.60	Manganese (o/than waste and scrap, unwrought) and articles thereof, nesoi	3.7%	$132,746
	2850.00.07	Hydride, nitride, azide, silicide and boride of titanium	4.9%	$132,076
	9013.10.40	Telescopic sights for arms other than rifles; periscopes; telescopes as par	5.3%	$129,990
	9001.90.60	Mirrors, unmounted	2.8%	$86,800
	3501.90.60	Caseinates and other casein derivatives, nesoi	0.1%	$84,100
	2934.90.90	Other non-aromatic or non-modified aromatic heterocyclic compounds	6.5%	$83,735
	9506.99.60	Athletic and sports articles and equipment nesoi, and parts & accessories t	4.0%	$83,300
	2204.10.00	Sparkling wine, made from grapes	1.6%	$76,561
	3801.10.10	Artificial graphite plates, rods, powder and other forms, for manufacture i	3.7%	$76,243
	4011.10.10	New pneumatic radial tires, of rubber, of a kind used on motor cars (includ	4.0%	$73,072
	7013.31.30	Glassware for table or kitchen purposes (o/than drinking glasses), of lead	10.5%	$68,200
	8414.59.60	Fans, nesi	2.3%	$66,080
	2007.99.25	Cherry jam	4.5%	$58,921
	6802.23.00	Monumental or building stone & arts. thereof, of granite, simply cut/sawn,	3.7%	$56,642
	2811.29.50	Other inorganic oxygen compounds of nonmetals, nesoi	3.7%	$56,215
	2903.30.20	Fluorinated, brominated or iodinated derivatives of acyclic hydrocarbons, n	3.7%	$49,949
	7013.31.50	Glassware for table or kitchen purposes (o/than drinking glasses), of lead	6.0%	$42,280
	4104.22.00	Bovine leather, without hair on, pretanned, other than vegetable pretanned,	3.3%	$41,772
	2001.90.39	Vegetables (including olives) nesi, prepared or preserved by vinegar or ace	9.6%	$41,685
	2818.10.20	Artificial corundum, in grains, or ground, pulverized or refined	1.3%	$40,822
	7020.00.60	Articles of glass, not elsewhere specified or included	5.0%	$38,225
	2201.10.00	Mineral waters and aerated waters, not containing added sugar or other swee	0.6%	$36,985
	2827.60.50	Iodides and iodide oxides, other than of calcium, copper or potassium	4.2%	$35,705
	3824.90.28	Chemical mixtures nesoi, containing 5% or more by weight of aromatic or mod	9.8%	$33,883
	7326.20.00	Iron or steel, articles of wire, nesoi	3.9%	$30,622
	1806.90.90	Chocolate and preps w/cocoa, nesoi, not put up for retail sale	6.0%	$28,202
	2202.10.00	Waters, including mineral waters and aerated waters, containing added sugar	0.3%	$27,063
	8108.90.60	Titanium, wrought nesoi	15.0%	$25,924
	6802.93.00	Monumental or building stone & arts. thereof, of granite, further worked th	3.7%	$25,707
	7616.99.50	Aluminum, articles, nesoi	2.5%	$24,952
	8502.39.00	Electric generating sets, nesoi	2.5%	$22,970
	7326.90.85	Iron or steel, articles, nesoi	2.9%	$22,539
		TOTAL TOP 50 GSP FREE ITEMS FROM Ukraine.....		$39,451,973
		TOTAL GSP FREE FROM Ukraine.....		$40,032,783 (121)
		TOTAL IMPORTS IN GSP ITEMS FROM Ukraine.....		$373,624,262 (271)

FLAGS: '+'=Not made in U.S.; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec;

[FR Doc. 01–7521 Filed 3–23–01; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 16, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–9133.
Date Filed: March 12, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0101 dated March 2, 2001
TC2 Within Africa Resolutions r1–r27
Minutes—PTC2 AFR 0102 dated March 9, 2001
Tables—PTC2 AFR FARES 0039 dated March 9, 2001
TC2 Within Africa Specified Fares Tables
Intended effective date: May 1, 2001.

Docket Number: OST–2001–9170.
Date Filed: March 13, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR–AFR 0130 dated March 9, 2001
TC2 Europe-Africa Resolutions r1–r42
Minutes—PTC2 EUR–AFR 0131 dated March 13, 2001
Tables—PTC2 EUR–AFR FARES 0087 dated March 13, 2001
Intended effective date: 1 May 2001.

Docket Number: OST–2001–9176.
Date Filed: March 14, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0071 dated February 9, 2001
South Atlantic-Europe Resolutions r1–r14
PTC12 SATL–EUR 0072 dated February 13, 2001
South Atlantic-Europe Resolutions r15–r16
Minutes—PTC12 SATL–EUR 0073 dated March 13, 2001
Tables—PTC12 SATL–EUR FARES 0021 dated February 13, 2001
PTC12 SATL–EUR FARES 0022 dated February 13, 2001
Intended effective date: April 1, 2001.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–7427 Filed 3–23–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 16, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9181.

Date Filed: March 15, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 2001.

Description: Application of C&L, Inc. d/b/a Homer Air pursuant to 49 U.S.C. 41102, and Subpart Q, requesting a Certificate of Public Convenience and Necessity to engage in interstate scheduled air transportation of persons, property, and mail: between any point in any State in the United States or District of Columbia, or any Territory or Possession of the United States, and any other point in any State of the United States or the District of Columbia, or any Territory or Possession of the United States.

Docket Number: OST–1999–5140.

Date Filed: March 16, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 6, 2001.

Description: Application of Arrow Air, Inc., requesting (1) renewal for an unlimited term of Certificate Authority, last re-issued by Order 2000–8–5, authorizing U.S.-Peru scheduled all-cargo services; and (2) Amendment of this Certificate Authority to reflect the broader authority now afforded the carriers of both Peru and the U.S. under the 1998 Air Transport Agreement.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–7426 Filed 3–23–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) as a request for review and approval. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice allowing for a 60-day comment period on the collection of information was published on 12/28/2000, page 82453–82454.

DATES: Comments must be submitted on or before April 25, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Noise Levels for U.S. Certificated and Foreign Aircraft; Estimated Airplane Noise Levels in A-Weighted Decibels.

Type of Request: New request.

OMB Control Number: 2120–XXXX.

Form(s): N/A.

Affected Public: An estimated 50 aircraft manufacturers/modifiers.

Abstract: The FAA proposes to collect current data from aircraft manufacturers (or modifiers) to update the two AC's. The following will be the method used. First, a draft revision to AC 36–1G and AC 36–3G containing information that resides within the FAA will be produced. The draft AC's will then be sent to each aircraft manufacturer and modifier advising them that the Advisory Circulars are being updated and asking them to (1) review the draft AC's for consistency with the aircraft manufacturer's (or modifier's) records, and (2) provide any additions or corrections to the information in the draft AC's.

Estimated Annual Burden Hours: 875 hours one time.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–7425 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; RTCA Special Committee 193/EUROCAE Working Group 44

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 193/EUROCAE Working Group 44 meeting to be held April 2–6, 2001, starting at 9 a.m. The meeting will be held at EUROCONTROL, Rue de la Fusee, 96, B–1130, Brussels, Belgium.

The agenda will include: April 2: Plenary Session: (1) Welcome and Introductory Remarks; (2) Review Agenda; (3) Review Previous Meeting Minutes; (4) Presentations; (5) Sub-group (SG)–2 (Terrain and Obstacle Databases); (a) Review Previous Meeting Minutes; (b) Review Actions of Previous Meeting; (c) Presentations; (d) Review Draft Document; April 3: (6) Continue Sub-group (SG)–2; April 4: (7) Sub-group (SG)–3 (Airport Databases); (e) Review Previous Meeting Minutes; (f) Review Actions of Previous Meeting; (g) Presentations; (h) Review Draft Document; April 5: (8) Continued SG–3 Discussion; April 6: Closing Plenary Session: (9) Review Summary of SG–2 and SG–3 (10) Assign Task; (11) Other Business; (12) Date and Location of Next Meeting; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on March 20, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–7422 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; RTCA Government/Industry Free Flight Steering Committee

Cancellation

The April 2–6 RTCA Government/Industry Free Flight Steering Committee meeting announced in the **Federal Register**, 66 FR 15316 (Thursday, March 16, 2001), second column, has been canceled. It was submitted in error and should have announced RTCA Special Committee (SC)–193/EUROCAE Working Group 44 meeting in Brussels, Belgium. A new notice for SC–193 will be published.

Persons wishing to obtain further information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or *dclarke@rtca.org* (e-mail).

Issued in Washington, DC, on March 20, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–7423 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 25, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office; 5950 Hazeltine National Drive; Suite 400; Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Executive Director of the Melbourne Airport Authority at the following address: Melbourne Airport Authority; One Air Terminal Parkway, Suite 220; Post Office Box 1330; Melbourne, Florida 32902–1330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Armando L. Rovira, Program Manager, Orlando Airports District Office; 5950 Hazeltine National Drive, Suite 400; Orlando, Florida 32822; Phone: (407) 812–6331 Ext. 31. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 8, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Melbourne Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 3, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–05–C–00–MLB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2001.

Proposed charge expiration date: April 1, 2003.

Total estimated net PFC revenue: $1,193,528.

Brief description of proposed project(s):

Extend Runway 9R/27L (700′ × 150′)
Interior Service Road, Phase 1
Acquire Aircraft Loading Bridge
Wetland Inventory & Mitigation Plan
Environmental Permitting

Acquire Flight Information Display System
Auxiliary Passenger Departure Lounge

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne Airport Authority.

Issued in Orlando, Florida on March 20, 2001.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 01–7424 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Waukesha County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the pubic that an environmental impact statement will be prepared for transportation improvements in the State Trunk Highway (STH) 83 corridor between County Trunk Highway (CTH) "NN" at the north limits of the Village of Mukwonago and Interstate Highway 94 (IH–94) in Waukesha County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin 53719–2814; telephone: (608) 829–7510. You may also contact Ms. Carol Cutshall, Director, Bureau of Environment, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965; telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Offices' Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Offices' database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a Draft Environmental Impact Statement (EIS) on a proposal to provide safety, operational and capacity improvements on an approximate 21 kilometers (13 miles) section of STH 83 between CTH "NN" at the north limits of the Village of Mukwonago and the vicinity of IH–94 in Waukesha County. The proposal is being considered to addresses existing and future transportation demand on STH 83 (as identified in the 2020 Regional Transportation System Plan for Southeastern Wisconsin), to improve safety, and to preserve land for future transportation improvements. The environmental impact statement will evaluate the social, economic and environmental impacts of alternatives, including: (1) No build, (2) improvements within the existing highway corridor, and (3) improvements on new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private agencies and to private organizations and citizens who have expressed, or are known to have an interest in this proposal. A project advisory committee comprised of Federal and State agencies, local officials, environmental, and other community interests will be established to provide input during development and refinement of alternatives and impact evaluation activities. Public meetings and other forums will be held to solicit comments from citizens and interest groups. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Agencies having an interest in or jurisdiction regarding the proposed action will be contacted through interagency coordination meetings and mailings.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are 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 or the Wisconsin Department of Transportation at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT**

(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)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 14, 2001.

Richard C. Madrzak,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 01–7331 Filed 3–23–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8833

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 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

DATES: Written comments should be received on or before May 25, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 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, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based return Position Disclosure Under Section 6114 or 7701(b).

OMB Number: 1545–1354.

Form Number: Form 8833.

Abstract: Taxpayers who are required by Internal Revenue Code section 6114 to disclose a treaty-based return position

use Form 8833 to disclose that position. The form may also be used to make the treaty-based return position disclosure required by regulation § 301.7701(b)–7(b) for "dual resident" taxpayers.

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 individual or households.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 6 Hours, 25 minutes.

Estimated Total Annual Burden Hours: 38,460.

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: March 13, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–7434 Filed 3–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, April 26, 2001.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

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 operational meeting of the Citizen Advocacy Panel will be held Thursday, April 26, 2001, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:20 p.m. on Thursday, April 26, 2001.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 20, 2001.

Cathy VanHorn,

Director, Citizen Advocacy Panel (CAP), Communication and Liaison.

[FR Doc. 01–7433 Filed 3–23–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 262 (Rev. 1)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Pre-filing Agreements for Large and Mid-Size Business Taxpayers.

EFFECTIVE DATE: March 3, 2001.

FOR FURTHER INFORMATION CONTACT: Gerald W. Reese, Director, Pre-Filing & Technical Guidance, Large and Mid-Size Business, LM:PFT, IRS, New Mint Bldg, M–3–425, 1111 Constitution Ave, NW., Washington DC 20224, (202) 283–8280 (not a toll-free call), *Gerald.Reese@irs.gov*

Order Number 262 (Rev. 1)

Pre-filing Agreements for Large and Mid-Size Business Taxpayers

Summary: The authority of the Commissioner of Internal Revenue to enter into a written agreement with any person relating to that person's liability for any Internal Revenue tax for any taxable period ending prior to or subsequent to the date of such agreement is delegated as described below.

Authority: To enter into and approve pre-filing agreements, which are described in Rev. Proc. 2001–22 (and any successor Revenue Procedure), and to enter into and approve agreements remaining in process under Notice 2000–12, if any. This does not include the authority to set aside any pre-filing agreement.

Delegated to: Commissioner and Deputy Commissioner, Large and Mid-Size Business (LMSB); LMSB Industry Directors; and LMSB Directors of Field Operations.

Redelegation: This authority shall not be redelegated.

Sources of Authority: 26 CFR 301.7121–1(a).

This order supersedes Delegation Order 262 effective February 10, 2000 (as amended). To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified.

Dated: March 3, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–7432 Filed 3–23–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 26, 2001

Part II

Federal Communications Commission

47 CFR Part 76

Carriage of Digital Television Broadcast Signals; Proposed Rule and Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120, CS Docket No. 00–96; CS Docket No. 00–2, FCC 01–22]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This document requests information concerning the issue of mandatory dual carriage. Specifically, the document seeks information to determine whether a cable operator will have the channel capacity to carry the digital television signal of a station, in addition to the analog signal of that same station, and without displacing other programming or services; whether market forces, through retransmission consent, will provide cable subscribers access to digital television signals and television stations' access to carriage on cable systems; and how the resolution of the carriage issues would impact the digital transition process.

DATES: Comments are due May 10, 2001. Replies are due June 25, 2001. Written comments by the public on the proposed information collections are due May 25, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before May 25, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–7200 or via the internet at egore@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 01–22, adopted January 18, 2001; released January 23, 2001. The full text of the Commission's FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at *http://www.fcc.gov/csb/*. This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding.

Further Notice of Proposed Rulemaking

Synopsis of the Further Notice of Proposed Rulemaking

I. Background

1. For background on this FNPRM, see final rule published elsewhere in this issue of the **Federal Register**. To ensure that the Commission has a sufficient body of evidence on which to evaluate the issue of dual carriage, the Commission finds it necessary to issue this FNPRM to address several critical questions at the center of the carriage debate including, inter alia; whether a cable operator will have the channel capacity to carry the digital television signal of a station, in addition to the analog signal of that same station, and without displacing other programming or services; whether market forces, through retransmission consent, will provide cable subscribers access to digital television signals and television stations access to carriage on cable systems and how the resolution of the carriage issues would impact the digital transition process. The Commission has also sent out a channel capacity and retransmission consent survey to 16 cable operators in a separately issued item. The responses from the survey will be incorporated into the Second Report and Order in this proceeding. The FNPRM also raises questions concerning the applicability of the rules and policies adopted in the Order to satellite carriers under the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). The Commission needs further information on a range of issues, including cable system channel capacity and digital retransmission consent agreements to build a substantial record upon which to develop the best policy for the various entities impacted in this area.

2. In the first Report and Order, the Commission tentatively concluded that a dual carriage requirement may burden cable operators' First Amendment interests more than is necessary to further the important governmental interests they would promote. However, in this FNPRM, we request further information on a number of matters, including, but not limited to the need for dual carriage for a successful transition to digital television and return of the analog spectrum; cable system channel capacity; and digital retransmission consent. In addition, we ask whether cable operators should be allowed to increase subscriber rates for each 6 MHz of capacity devoted to the carriage of digital broadcast signals.

3. To date in this proceeding, we have received comments arguing that the statute requires dual carriage or that the statute forbids it. It is our view, having deliberated extensively on this question, that neither of these views prevail. Based on the record currently before us, we believe that the statute neither compels dual carriage; nor prohibits it. It is precisely the ambiguity of the statute that has driven this policy debate. In order to weigh the constitutional questions inherent in a statutory construction that would permit dual carriage, we believe it is appropriate and necessary to more fully develop the record in this regard. Because any decision requiring dual carriage would likely be subject to a constitutional challenge, and because an administrative agency can consider potential constitutional infirmities in deciding between possible interpretations of a statute, we are compelled to further develop the record on the impact dual carriage would have on broadcast stations, cable operators and cable programmers, as well as consumers. We believe that more evidence is necessary because the Supreme Court sustained the Act's analog broadcast signal carriage requirements against a First Amendment challenge principally because Congress and the broadcasting industry built a substantial record of the harm to television stations in the absence of mandatory analog carriage rules. We are also mindful that the record must substantially reflect how Commission action in this proceeding will serve the three identified governmental interests supporting mandatory carriage in Turner, which are the preservation of the benefits of free over-the-air television; the promotion of

the widespread dissemination of information from a multiplicity of sources; and the promotion of fair competition.

4. We also recognize that the intermediate scrutiny factors established in *U.S.* v. *O'Brien* and applied in the Turner cases, for determining whether a content-neutral rule or regulation violates the Constitution, must also be satisfied here. A content-neutral regulation will be upheld if: (1) It furthers an important or substantial government interest; (2) the government interest is unrelated to the suppression of free expression; and (3) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. In sum, under the O'Brien test, a regulation must not burden substantially more speech than is necessary to further the government's legitimate interests. Thus, a dual carriage rule must satisfy the Turner factors and meet the O'Brien test. We invite commenters that support a dual carriage requirement to provide specific empirical information to demonstrate how mandatory dual carriage would satisfy the requirements of both Turner and O'Brien. We request that commenters that have previously submitted legal arguments on these points in response to the FNPRM, not repeat these arguments.

5. In the case of dual carriage, we believe that the record is insufficient to demonstrate the degree of harm broadcasters will suffer without the carriage of both signals. In addition, we must carefully consider the burden such a requirement would impose on the cable operator. We seek information on digital retransmission consent agreements to determine the degree to which cable operators are carrying digital signals on a voluntary basis. If broadcasters are being carried by agreement, then they may not be harmed in the absence of a digital carriage requirement. In addition, First Amendment precedent requires that we tailor the carriage requirement to avoid burdening more speech than necessary. In this regard, the impact of mandatory carriage on cable systems was relevant in Turner. We therefore seek substantive information to determine cable system channel capacity.

6. Concurrently with this FNPRM, we are sending out a survey to cable operators that asks specific questions concerning retransmission consent as well as cable system channel capacity. We believe that this form of inquiry is necessary because we need particularized system information that can only be obtained through a survey. The answers to this survey will be used to supplement the general responses we receive as a result of the questions we ask in the FNPRM. The cable operators' answers to the survey questions will be included in the record and available for public comment. We expect that the information provided by the cable operators will provide further insight regarding the constitutional questions inherent in the dual carriage discussion.

II. Issues

A. Digital Television Transition and Mandatory Carriage

7. Both Congress and the Commission have worked to develop a digital television transition that accounts for the needs of the broadcast industry, while recognizing the government's interest in the prompt return of the analog broadcast spectrum. The Commission's stated expectation when the DTV rules were adopted was that analog television broadcasting would cease no later than the end of 2006. With passage of the Balanced Budget Act of 1997, Congress codified the December 31, 2006 analog television termination date, but also adopted certain exceptions to it in section 309(j)(14) of the Communications Act which provides:

(A) Limitations on terms of terrestrial television broadcast licenses.—A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.

(B) Extension.—The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that—

(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

(ii) digital-to-analog converter technology is not generally available in such market; or

(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market—

(I) do not subscribe to a multichannel video programming distributor (as defined in section 522 of this title) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and

(II) do not have either—

(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or

(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

8. The Notice of Proposed Rule Making ("NPRM") 63 FR 42330, Aug 7,1998 in this proceeding discussed must carry rules for possible application during a temporary transitional period prior to the cessation of analog broadcasting. Because of the nature of the exceptions set forth in the Balanced Budget Act of 1997, questions have arisen as to how long the transition period might last either with or without a dual carriage requirement. Some have expressed doubt that the return of the analog broadcast spectrum will be completed by the end of 2006, regardless of whether there is a dual carriage requirement. Others have argued that dual carriage is necessary to enable broadcasters to meet the statutory tests and complete the transition on time. None of the participants in this proceeding, however, have provided a concise plan for how and when the transition will be completed. As such, a number of questions concerning the transition have arisen. For example, under what circumstances and statutory interpretations will the statutory criteria for the auction of recaptured broadcast television spectrum be satisfied? Will the analog television license be returned when 85% or more of the television households in a market either subscribe to an MVPD that carries all of the digital broadcast stations in the market or have a DTV receiver or digital downconverter to receive the digital signal over the air? Or is there a different interpretation of the statutory exceptions? Will the spectrum be returned if some of the MVPD subscribers are unable to receive and view the DTV programming notwithstanding that it is carried by the MVPD because they do not have a digital receiver or converter? How does the growth of competitive non-cable MVPD's change the analysis? Alternatively, would the analog licenses be returned in a market in which 85% of the television households had a DTV receiver or digital-to-analog converter, but only 30% subscribed to a MVPD

that carried all of the digital television stations in the market?

9. Understanding how the affected parties expect to complete the transition, and exactly how the law applies, substantially affects the Commission's policy approach to the digital television transition as well as to the overall issue of cable carriage. A mandatory dual carriage requirement, for example, would place a more significant and lasting burden on a cable operator's constitutional rights if in fact there will be a substantially extended transition to a digital-only environment. We seek comment on these transition issues and ask for more specific comment on when the analog spectrum is likely to be returned under both mandatory and non-mandatory dual carriage scenarios. We also seek comment on whether and how the dual carriage burden on cable operators may be lessened by using a transitional approach limiting dual carriage to a specified period of time. For example, in this regard, how would a three year limit on dual carriage affect the constitutional question?

10. There are several other issues concerning the rollout of digital broadcast television that still remain. For example, a number of digital television licensees in markets 11–30, that were required to begin digital broadcasting on November 1, 1999 have asked for extensions of time to build out their facilities. Such petitions assert that these extensions may have been necessary because local zoning requirements have hindered the construction of digital broadcast towers or because there are construction and equipment delays. Whatever the case may be, it is difficult to proceed with the dual carriage question if it remains unclear how and when digital signals will become available in any particular market. Because an operator is only required to carry broadcast signals up to one-third of its channel capacity, to rule on the dual carriage issue now may result in on-air digital signals being carried, at the expense of those yet-to-air digital signals that may not be carried because the operator's one-third cap has been met and the operator is reluctant to disrupt viewers by changing signals carried. In this regard, we ask whether we should wait for all or a more significant number of broadcasters to build out their facilities before considering a dual carriage rule to avoid this potential disruption.

11. We also note that there appears to be a limited amount of original digital programming being broadcast. This calls into question the practicality of imposing a dual carriage rule at this time. Cable subscribers would not immediately benefit from a dual carriage rule if there is little to view but duplicative material. In addition, there is a risk that if carriage were mandated, cable subscribers would lose existing cable programming services that would be replaced on the channel line-up by digital television signals with less programming. It is difficult to decide definitional issues, such as what would be considered a "duplicative signal" without more information. We ask broadcasters to describe what part of their planned digital programming streams will be devoted to simulcast of their analog programming and what parts are, or will be, used for other programming. We ask broadcasters to provide us with information on the exact amount of digital programming, on a weekly basis, being aired in a high definition format and the exact amount of original digital programming. We also seek comment on the number of hours, in an average day, that a broadcaster currently airs digital television, and specifically high definition digital programming.

12. We also seek further comment on issues relevant to the carriage of digital signals by small operators. As described in the First Report and Order, the SCBA expressed concern that allowing broadcasters to tie analog and digital retransmission consent could have a negative financial effect on small cable operators. The current record does not contain adequate evidence on this point. We specifically request information on small cable operators' equipment costs to deliver digital signals to subscribers and experiences thus far with retransmission consent negotiations involving both analog and digital signals.

13. *Program-related.* In addition, as discussed in the final rule published elsewhere in this issue of the **Federal Register**, cable operators are required to carry "program-related" material as part of the broadcaster's primary video. We seek comment on the proper scope of program-related in the digital context. As noted in the Report and Order, we believe that digital television offers the ability to enhance video programming in a number of ways. For example, a digital television broadcast of a sporting event could include multiple camera angles from which the viewer may select. In addition, a digital broadcast could enable viewers to select other embedded information such as sports statistics to complement a sports broadcast or detailed financial information to complement a financial news broadcast. We seek comment on whether such information or interactive enhancements like playing along with a game or chatting during a TV program should qualify as "program related." What are broadcasters' plans in this regard? What are the technical requirements for broadcasting, receiving and viewing this programming material? Would they be viewed on a screen simultaneously or is it necessary to change channels or select a different view on the same screen? What is the proper relationship between "program-related" and "ancillary or supplementary" in terms of the statutory objectives? To what extent, if any, is "program-related" limited by ancillary or supplementary? We also note that the statutory language that describes "program-related" in the context of NCE stations differs in some respects from the language regarding program-related content for commercial stations. Specifically, section 615(g)(1), establishing the content of NCE stations to be carried by cable operators, tracks the language of section 614(b)(3)(A), the provision for commercial broadcasters, except that the NCE provision goes on to include in the definition of "program related" material: "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." In light of the foregoing, we seek comment on how to define "program related" material for NCE stations. How, if at all, should it differ from "program-related" in the context of commercial stations? For example, some commenters have argued that if an NCE station multicasts programming for "educational" purposes, the cable operator should carry all such program streams. We seek comment on whether these "educational" program streams should qualify as "program related" in the context of must carry, particularly in light of the language in 615(g)(1) noted above.

B. Channel Capacity

14. In the NPRM, we sought quantified estimates and forecasts of available usable channel capacity. We asked whether there were differences in channel capacity that are based on franchise requirements, patterns of ownership, geographic location, or other factors. We also inquired about the average number of channels dedicated to various categories of programming, such as pay-per-view, leased access, local and non-local broadcast channels, and others that would assist us in understanding the degree to which capacity is, and will be, available over the next several years. We sought system upgrade information. For example, we asked for comment on

whether 750 MHz is the proper cutoff for defining an upgraded system or should a lower number, such as 450 MHz, be used instead. We also asked commenters to provide information on the expected growth rate for cable channel capacity between now and 2003. In addition, we sought comment about cable programmer plans to convert to digital and what additional carriage needs these programmers would have in the future. These questions were posed to generate a record on available channel capacity for digital carriage purposes and help the Commission determine the speech burden on cable operators under the First Amendment and the Turner cases.

15. We received widely divergent information concerning cable channel capacity availability. For example, NAB asserts that current channel capacity is substantial and a significant number of channels are unutilized, particularly in large markets where the Commission has required the construction of the first DTV stations. NCTA disputes this claim and asserts that what matters is not whether a cable system has adequate capacity to add new digital must carry signals during the transition, but whether a significant number of actual systems serving a significant number of customers will be forced to remove services to accommodate both analog and digital must carry signals. We find the comments and analyses provided by the commenters are useful for establishing the framework for this inquiry. However, a number of the commenters rely on data sources that are either incomplete, or draw upon an unrepresentative sample of cable systems. Moreover, some of the data are outdated for future channel capacity estimates. For all of these reasons, as well as the fact that accurate capacity information is essential for a well articulated and constitutionally sustainable dual carriage decision under O'Brien and Turner, we seek further information on current capacity and forecasts for capacity growth in the future.

16. We first reiterate the questions we posed in the NPRM, as summarized elsewhere in this FNPRM. We then note that the NCTA, on its website, has stated the following: "It is estimated that 82% of all cable homes now are passed by at least 550 MHz plant—with 65% of cable homes passed by systems with 750 MHz or higher, positioning cable to compete more effectively with DBS companies, who typically offer more than 100 channels." While this information is more recent than the data submitted by the NAB, it is still tabulated from reports in 1999. Thus, we ask for any information on system upgrades current through January, 2001. We specifically seek comment on the number of cable systems nationwide, on a percentage basis, that are now, or soon will be, upgraded to 750 MHz. With regard to these kinds of systems, we ask how many channels are now, or soon will be available for video programming. We seek comment on whether it is possible for 750 MHz systems to be channel-locked and have no capacity to carry additional digital broadcast signals. We seek comment on cable industry plans to build systems of greater capacity in the future.

17. We also seek comment on techniques that conserve or recapture cable channel capacity. Data on this matter is important because it may belie the cable industry's claim that there is, or will be, no channel capacity to add more programming. For example, an operator that uses 256 QAM will have 40% more capacity than an operator that does not. With this noted, we ask how many cable systems are now, or soon will be, using 256 QAM. In addition, we ask if there are certain set top boxes or related software that can further increase capacity for systems using 256 QAM. Some operators are also using specialized techniques that can comb packages of digital cable programming sent by digital compression operations such as Headend in the Sky ("HITS") or other digital compression program delivery services. Using such filtering technology, an operator can select the digital cable programming it wants to carry and discard that programming it prefers not to carry. Through this process, an operator can save as much as 10 MHz of cable channel capacity. We seek comment on how many operators are currently using combining technology to recapture spectrum. A third technique used by some cable operators to save channel capacity is to shift certain services from an analog tier to a digital tier where such programming will be digitally compressed. By doing this, an operator could free up additional analog space for other uses. We seek comment on this technique and ask how many operators are now exercising this option.

18. In its comments, New World Paradigm ("NWP") states that the Commission should adopt digital carriage rules that allow or motivate cable operators to deliver services from video servers through the internet's channel addressing methodology. According to NWP, channel addressing uses existing capacity very efficiently and asserts that adoption of the internet's channel addressing method would serve the public interest because it expands cable channel capacity to accommodate an infinite amount of services. NWP believes that accessing programming residing in a video server, and then sending that specific programming to the subscriber, is a far more efficient way of using channel capacity than shipping all channels to the subscriber at the same time. NWP states that a channel should be defined as "any internet addressable video service engineered for the electromagnetic spectrum carried solely in wired networks from the producer of the video service and delivered through a video server and made available for and to subscribers of a cable system." NWP argues that expanding the definition of "cable channel" would position cable to be a communications medium merging voice, internet and video services into a characterless digital data stream. We seek comment on NWP's proposal, in general, and ask whether it is technically feasible for cable operators to cache broadcast programming in this manner. We also ask what statutory or rule changes would be necessary to accomplish what NWP proposes. Finally, we ask what copyright issues may arise in this context, how this approach would affect the advertising rate structure for broadcasters, and whether cable operators are contractually or otherwise restricted from implementing a video server model of distributing local broadcast programming.

C. Voluntary Carriage Agreements

19. In the NPRM, we recognized that most commercial broadcast stations, at least 80% in 1993 for example, were carried by cable systems through retransmission consent and asked whether this general pattern would be repeated with respect to digital broadcast television signals during the transition period. We stated that the broadcasters that are most likely to elect must carry are those stations that are not affiliated with the four major networks. Many of these stations will not commence digital operations until 2002 when they are required to do so under the Commission's rules. We sought comment on these general suppositions and on the effect these market factors would have on the need to implement a digital carriage requirement. We also asked what effect not setting rules would have on television stations not affiliated with the top four networks that want to commence digital broadcasting before 2002. We sought comment on how retransmission consent, rather than mandatory carriage,

could speed the transition to digital television.

20. According to the cable commenters, several digital retransmission consent agreements have been reached. For example, AT&T Broadband has arrangements with NBC and FOX to carry their owned and operated stations' digital signals for the next several years. Time Warner states it has digital carriage arrangements with all four major networks, some network affiliate owners, as well as a group of public broadcasters. While we are encouraged that some broadcasters, such as those noted, have been able to obtain cable carriage through retransmission consent agreements, outstanding questions remain concerning the scope and pace of the retransmission consent process. For example, MSTV reports that cable operators have negotiated digital carriage with network owned and operated stations but have refused to discuss digital retransmission consent with several network affiliated station groups. We seek comment on whether this statement is correct. If so, why haven't cable operators entered into negotiations with network affiliated broadcast groups?

21. With regard to the retransmission consent deals already concluded, we seek comment on the scope of such agreements. For example, while Time Warner has deals with CBS, ABC, NBC, FOX, and several PBS affiliates, we seek comment on how many digital television signals are now available for purchase by subscribers. Moreover, on what tier of service are these signals being carried? We also ask whether such signals are being carried in 8 VSB or in QAM. What television markets do these deals affect? And in those markets, what percentage of cable subscribers are served by a Time Warner system? And of those systems, do the deals apply only to upgraded 750 MHz systems or all systems regardless of capacity? At first glance, Time Warner's efforts seem to satisfy our goal of providing cable subscribers' access to digital television signals on a voluntary basis, but if the agreements only concern certain areas and certain systems, it would call into question the extent to which the marketplace is actually working. We pose the same set of questions and concerns to the other publicly announced arrangements involving other cable operators, such as AT&T and its respective broadcast station partners.

22. We also note that in August of 1999, the Commission adopted new ownership rules that affect the number of television stations in any given market that can be owned or controlled by a single broadcaster. We seek comment on the effect of these ownership changes on carriage of broadcast signals and ask how the potential changes in the broadcast industry will affect the retransmission consent process.

D. Tier Placement

23. As discussed, section 623(b)(7)(A) of the Act requires that the basic tier on a rate regulated system include all signals carried to fulfill the must carry requirements of sections 614 and 615 and "any signal of any television broadcast station that is provided by the cable operator to any subscriber * * *" We believe that it would facilitate the digital transition to permit cable operators that are carrying a broadcast station's analog signal on the basic tier to carry that broadcast station's digital signal on a digital tier pursuant to retransmission consent. We seek comment on permitting such carriage and whether it would encourage more cable operators to voluntarily carry a broadcaster's digital signal. We believe that such an approach, which is necessarily limited to the duration of the transition in a given market, is consistent with the flexibility given the Commission by section 614(b)(4)(B) to prescribe rules for the transition. We seek comment on this interpretation. We also seek comment on limiting this approach to those situations in which the digital programming is a simulcast of the analog programming available on the basic tier. We reiterate that, as discussed, if a cable operator is carrying only the broadcaster's digital signal, and not the analog signal, the digital signal must be available to subscribers on a basic tier to which subscription is required for access to any other tier.

E. Per Channel Rate Adjustments

24. We recognize that cable operators will be adding digital broadcast services to their channel line-ups in the years ahead. While the addition of such channels implicates our rate regulation rules, we received no comment on what impact this occurrence will have on our per channel rate adjustment methodology. Thus, in addition to providing for the direct recovery of costs associated with adding digital broadcast programming, as explained, we now propose to permit cable operators to adjust BST rates to reflect the addition of channels of digital broadcast programming, if the operator decides to place such programming on that tier. When developing rate regulations pursuant to the 1992 Cable Act, the Commission recognized that pricing incentives were important to encouraging voluntary increases in the number of channels of programming offered to cable subscribers. The Commission also recognized that, even in a competitive environment, service increases would result in higher prices, just as service decreases should result in lower prices. The Commission developed a table of per channel rate adjustment factors based on an econometric model of the pricing behavior of systems facing competition. The amount of the permitted adjustment varied with the number of channels offered on the system, the permitted adjustment per channel decreasing as the number of channels increases. After gaining experience with rate regulation, the Commission concluded that optional additional incentives should be available to stimulate the addition of new services to the CPST or to the BST when it was the only tier of service offered. The Commission established a per channel adjustment factor of up to 20 cents per channel exclusive of programming costs for channels added to CPSTs , subject to a cap of $1.20 on rate increases through December 31, 1996 and $1.40 through December 31, 1997. An additional capped amount was allowed for license fees associated with the channels. Operators were required to offset any revenues received from a channel from the programming costs and per-channel adjustment associated with the channel. The Commission limited the per channel adjustment incentive to the CPST to maximize subscriber choice where cable operators could choose between the BST and the CPST when selecting a tier for a new nonbroadcast service and also to avoid increasing the complexity of the regulatory task faced by local regulatory authorities. The Commission also recognized that the base cost for a tier should be adjusted under some circumstances to reflect the reallocation of system costs to programming tiers when channels are moved between tiers.

25. We believe that cable operators should have sufficient incentives to add digital television broadcast programming, particularly where operators carrying a broadcast station's analog signal during the transition period must assign spectrum to accommodate digital signals. Because the cable industry operates in an increasingly competitive environment, we tentatively conclude that subscribers who purchase digital programming, including digital broadcast programming, should bear a fair share of the overall system costs associated with the number of channels delivered on the tier relative to the system's overall

capacity, and that subscriber rates be reasonable. Thus, we propose to allow cable operators adding digital broadcast signals to their channel line-ups, to increase rates for each 6 MHz of capacity devoted to carriage of such signals. We seek comment on this general policy and ask for comment on the proper adjustment methodology the Commission should adopt. For example, should the Commission revise § 76.922(g), and the accompanying per channel adjustment table, for this purpose? Alternatively, is the Form 1235 process outlined in the final rule published elsewhere in this issue of the **Federal Register**, adequate to account for such costs? We also seek comment on how channels should be counted in light of the sunset of CPST rate regulation. What methods are there for valuing cable channels? How would they work?

F. Satellite Home Viewer Improvement Act of 1999

26. Section 338 of the Act, adopted as part of the SHVIA, requires satellite carriers, by January 1, 2002, "to carry upon request all local television broadcast stations' signals in local markets in which the satellite carriers carry at least one television broadcast station signal," subject to the other carriage provisions contained in the Act. Until January 1, 2002, satellite carriers, such as DirecTV and Echostar, are granted a royalty-free copyright license to retransmit television broadcast signals on a station-by-station basis, subject to obtaining a broadcaster's retransmission consent. This transition period is intended to provide the satellite industry with time to begin providing local television signals into local markets, otherwise known as "local-into-local" satellite service. We recently adopted rules to implement the satellite carriage provisions contained in section 338. (*See* 66 FR 7410, Jan. 23, 2001.)

27. The rules we adopted in the satellite carriage proceeding specifically concerned the carriage of a television station's analog signal by a satellite carrier. While issues related to the carriage of a television station's digital signal were discussed, the Commission stated that the digital carriage requirements for satellite carriers should be addressed in the context of this docket. Herein, we have adopted policies governing the cable carriage of digital television signals. Given the SHVIA's general thrust that the Commission issue satellite carriage rules comparable to the cable carriage rules, we seek comment on how we should apply the digital cable carriage rules to satellite carriers. We note that satellite carriers provide video programming on a national basis through a space-based delivery facility while cable operators provide video service on a local franchise-area basis through a terrestrial delivery facility. Given these distinctions, we ask whether we should take into account the differences between the two technologies when implementing digital broadcast signal carriage rules for satellite carriers. Interested parties need not file additional comments on the constitutional or public policy aspects of satellite digital broadcast signal carriage, as we shall incorporate the relevant statements made in the satellite carriage proceeding into this docket.

28. Pursuant to the SHVIA, the Commission also adopted rules implementing section 339(b) of the Act. (*See* 65 FR 68082, Nov. 14, 2000.) This provision directs the Commission to apply the cable television network non-duplication, syndicated program exclusivity, and sports blackout requirements to satellite carriers. Congress directed the Commission to implement the new satellite rules so that they will be "as similar as possible" to the rules applicable to cable operators. In general, the new network non-duplication, syndicated program exclusivity, and sports blackout rules require a satellite carrier to delete programming when it retransmits a nationally distributed superstation to a household within the relevant zone of protection, and the nationally distributed superstation carries a program to which the local station or the rights holder to a sporting event has exclusive rights. In addition, the SHVIA requires that the Commission apply the sports blackout rule to satellite carriage of network stations. In all cases covered by the statute and the rules, the entity holding exclusive rights may require the satellite carrier to black out these particular programs for the satellite subscriber households within the protected zone. In the Report and Order implementing section 339(b), the Commission noted that it would consider the application of the satellite exclusivity rules to digital broadcast signals in another proceeding. We now seek comment on the application of the section 339(b) provisions, and our implementing rules, to the carriage of digital television signals by satellite carriers. We specifically seek comment on the application of the exclusivity requirements in light of the statements made. The comments filed on this subject in CS Docket 00–2 will be incorporated by reference in this proceeding.

III. Procedural Matters

A. Paperwork Reduction Act of 1995 Analysis

29. The requirements contained in this Further Notice of Proposed Rulemaking have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose proposed information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the proposed information collection requirements contained in this Further Notice of Proposed Rulemaking, as required by the 1995 Act. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Written comments by the public on the proposed information collections are due on or before May 25, 2001. Any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th St, SW., Room 1–0804, Washington, DC 20554, or via the Internet to jboley@fcc.gov. For additional information on the proposed information collection requirements, contact Judy Boley at 202–418–0214 or via the Internet at the above address.

OMB Control Number: 3060–0844.
Title: Digital Broadcast Carriage.
From Number: n/a.
Type of Review: Revision of a currently approved collection.
Respondents: 99.278.
Estimated Time Per Response: .5–1 hours.
Total Annual Burden: 2,355.
Total Annual Costs: $2,355.12
Needs and Uses: The information collection requirements under this control number are used to seek comment on possible changes to mandatory carriage rules, and explore the impact that cable carriage of digital television signals may have on other Commission rules.

B. Ex Parte Rules

30. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

C. Filing of Comments and Reply Comments

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the FNPRM on or before May 10, 2001 and reply comments on or before June 25, 2001. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form<your e-mail address." A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Eloise Gore at (202) 418–7200, TTY (202) 418–7172, or at *egore@fcc.gov*.

33. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Eloise Gore Cable Services Bureau, 445 12th Street NW., Room 4–A803, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 98–120]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

E. Initial Regulatory Flexibility Act Analysis

34. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules referenced in this FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the IRFA (or summaries thereof) will be published in the **Federal Register**.

35. Need for, and Objectives of, the Proposed Rule Changes. The objective of the FNPRM is to gather more information, and build the necessary record, in order to implement a constitutionally sustainable digital broadcast signal carriage policy.

36. Legal Basis. The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 309(j), 325, 336, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 309(j), 325, 336, 534, and 535.

37. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply. The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we are considering in this proceeding generally, will affect cable operators, OVS operators, and television station licensees.

38. Small MVPDs. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

39. Cable Systems. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

40. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

41. Open Video Systems. The Commission has certified 31 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

42. Program Producers and Distributors. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and SIC 7822, and $5 million or less in annual receipts for SIC 7922. Census Bureau data indicate the following: (a) there were 7,265 firms in the United States classified as Motion Picture and Video Production (SIC 7812), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (SIC 7822), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (SIC 7922), and 5627 of these firms had $4.999 million or less in annual receipts.

43. Each of these SIC categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

44. DBS: There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

45. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

46. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

47. Television Stations. The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

48. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

49. An element of the definition of "small business" is that the entity not

be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

50. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 30, 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

51. Small Manufacturers. The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.

52. Electronic Equipment Manufacturers. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will use the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

53. Electronic Household/Consumer Equipment. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will use the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

54. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. There are compliance requirements for cable operators and OVS operators. An attempt has been made to propose streamlined compliance requirements, especially for small cable operators, in this docket.

55. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We have proposed streamlined rules for the carriage of digital broadcast signals for small cable operators in this proceeding. We will examine this alternative in more detail in the next phase of this rulemaking.

56. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

57. Report to Congress. The Commission will send a copy of the final rule published elsewhere in this issue of the **Federal Register**, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the FNPRM, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FNPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

F. Ordering Clauses

58. Accordingly, *it is ordered* that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–7324 Filed 3–23–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120, CS Docket No. 00–96; CS Docket No. 00–2, FCC 01–22]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of technical and legal issues related to the carriage of digital broadcast signals pursuant to retransmission consent and mandatory carriage of commercial and noncommercial educational television stations under the Communications Act of 1934 ("Act"). In particular, this document clarifies that a digital-only television station may assert its right to mandatory carriage. Specifically, new television stations that transmit only digital signals, and current television stations that return their analog spectrum allocation and convert to digital operations, must be carried on cable systems.

DATES: These rules contain information collection requirements that have not yet been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the new or modified information collections are due May 25, 2001.

ADDRESSES: Written comments on the new or modified information collections should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–7200 or via internet at via internet at egore@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order FCC 01–22, adopted January 18, 2001; released January 23, 2001. The full text of the Commission's Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at *http://www.fcc.gov/csb/*.

Synopsis of the Report and Order

I. Introduction

1. In the Notice of Proposed Rulemaking ("NPRM") 63 FR 42330, Aug. 7, 1998, in this docket, we sought comment on a variety of issues relating to the carriage of digital television broadcast signals by cable television operators. With this First Report and Order ("Report and Order"), we resolve a number of technical and legal issues related to the carriage of digital broadcast signals concerning retransmission consent, broadcast spectrum flexibility and ancillary and supplementary services, mandatory carriage of commercial television stations and mandatory carriage of noncommercial educational television stations pursuant to the Communications Act of 1934 ("Act"). In addition, we clarify that a digital-only television station may assert its right to carriage. Specifically, new television stations that transmit only digital signals, and current television stations that return their analog spectrum allocation and convert to digital operations, must be carried.

2. In this document, we resolve matters relating to retransmission consent, content-to-be-carried, channel capacity, channel placement, and a host of other operational issues. Our principal goal is to provide a framework for private resolution of the issues raised in the NPRM, wherever possible, and to give guidance on technical issues relating to the carriage of digital television signals. Based on the record currently before us, we believe that the statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals ("dual carriage").

3. On this point, we tentatively conclude that, based on the existing record evidence, a dual carriage requirement appears to burden cable operators' First Amendment interests substantially more than is necessary to further the government's substantial interests of preserving the benefits of free over-the-air local broadcast television; promoting the widespread dissemination of information from a multiplicity of sources; and promoting fair competition in the market for television programming. However, in order to ensure that we have a sufficient body of evidence before us in which to evaluate this issue fully, so that we can ultimately resolve the issue of mandatory dual carriage, we find it necessary to issue a Further Notice of Proposed Rulemaking ("FNPRM") addressing several critical questions at the center of the carriage debate (see FNPRM published elsewhere in this issue of the **Federal Register**.)

4. At the outset, we recognize a number of statutory and public policy goals inherent in sections 614 and 615, and other parts of the Act. These include maximizing incentives for inter-industry negotiation; minimizing disruption to cable subscribers as well as the cable industry; promoting efficiency and innovation in new technologies and services; advancing multichannel video competition; maximizing the introduction of digital broadcast television; and maintaining the strength and competitiveness of broadcast television. Our goal is to facilitate an efficient market-oriented structure that implements the Act in a manner that, to the extent possible, permits private agreements to resolve issues. Based on the importance of cable television in the video programming marketplace, we believe that the cooperation and participation by the cable industry during the transition period would further the successful introduction of digital broadcast television.

II. Background

5. Pursuant to section 614 of the Act, and the implementing rules adopted by the Commission in Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Report and Order ("Must Carry Order") 58 FR 17350, Apr. 2, 1993, a commercial television broadcast station is entitled to request carriage on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. The Act states that systems with more than 12 usable activated channels must carry local commercial television stations, "up to one-third of the aggregate number of usable activated channels of such system[s]." A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be

subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station. Beyond this requirement, the carriage of additional television stations is at the discretion of the cable operator. In addition, cable systems are obliged to carry local noncommercial educational television stations ("NCE stations") according to a different formula and based upon a cable system's number of usable activated channels. Noncommercial television stations are considered qualified, and may request carriage if they: are licensed to a community within fifty miles of the principal headend of the cable system; or place a Grade B contour over the cable operator's principal headend. Cable systems with 12 or fewer usable activated channels are required to carry the signal of one qualified local noncommercial educational station; 13–36 usable activated channels are required to carry no more than three qualified local noncommercial educational stations; and more than 36 usable activated channels shall carry at least three qualified local noncommercial educational stations. Low power television stations, including Class A stations, may request carriage if they meet six statutory criteria. A cable operator, however, cannot carry a low power television station in lieu of a full power television station.

6. Cable operators are currently required to carry local television stations on a tier of service provided to every subscriber and on certain channel positions designated in the Act. Cable operators are prohibited from degrading a television station's signal, but are not required to carry duplicative signals or video that is not considered primary. Television stations may file complaints with the Commission against cable operators for non-compliance with sections 614 and 615. In addition, both cable operators and television stations may file petitions with the Commission to either expand or contract a commercial television station's market for broadcast signal carriage purposes. These statutory requirements were implemented by the Commission in 1993, and are reflected in sections 76.56 through 76.64 of the Commission's rules.

7. In a recent Memorandum Opinion and Order regarding band-clearing of the 700 MHz spectrum ("700 MHz Order") 65 FR 42879, Jul. 12, 2000 the Commission reiterated that cable carriage can play an important role as an alternative distribution channel during the transition period by providing continued service to viewers who would otherwise be deprived of broadcast service. Although the Commission stated that it would be considering the scope and manner of cable carriage of digital broadcast signals in this proceeding, it discussed the cable industry's carriage obligations for future digital television signals in the 700 MHz Order. First, the Commission clarified that cable systems are ultimately obligated to accord carriage rights to local broadcasters' digital signals. Specifically, the Commission stated that existing analog stations that return their analog spectrum allocation and convert to digital are entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions. The Commission also stated that to facilitate the continuing availability during the transition of the analog signal of a broadcaster who is party to a voluntary band clearing agreement with new 700 MHz licensees, such a broadcaster could, in this context and at its own expense, provide its broadcast digital signal in an analog format for carriage on cable systems. Specifically, the Commission stated that, in these circumstances, nothing prohibits the cable system from providing such signals in an analog format to subscribers, in addition to or in place of the broadcast digital signal, pursuant to an agreement with the broadcaster.

III. Carriage During the DTV Transition

8. The statutory provision triggering this rulemaking is found in section 614(b)(4)(b) of the Act. This section requires that:

> At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

There is little discussion of this provision in the Act's legislative history. However, the House Report states that "when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television (HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of this section." The Senate Committee Report describes the provision as providing that when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast HDTV, "it shall conduct a proceeding to make any change in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of new section 614."

9. In the NPRM, we recognized that, as a policy matter, the most difficult carriage issues arise during the transition because there will exist, for a temporary period, approximately twice as many television broadcast signals as are now on the air. We noted that toward the end of the transition period, there would be an increasing redundancy of basic content between the analog and digital signals as the Commission's simulcasting requirements are phased in. We recognized that, to the extent that the Commission imposes a dual carriage requirement, cable operators could be required to carry double the amount of television signals, that will eventually carry identical content, while having to drop various and varied cable programming services where channel capacity is limited. We sought comment on several carriage options that address the needs of the broadcasters and the concerns of the cable operators as well as the timing of mandatory digital broadcast signal carriage rules. These proposals included a range of approaches from "immediate" or dual carriage, in which cable systems would be required to carry both analog and digital commercial television signals up to the one-third capacity limit; the "either-or" proposal, in which broadcasters could choose must carry for either their analog or digital signals during the transition years; and the "no must carry proposal," under which digital signals would not have mandatory carriage rights during the transition period, but only when the transition is over.

10. The broadcast industry generally urges the Commission to impose a dual carriage requirement during the transition period to ensure that viewers have continued access to all available local television programming. In contrast, NCTA and other cable industry participants contend that digital must carry will "dictate technological outcomes before the market is ready." Time Warner argues that if cable operators were required to carry digital broadcast signals during the transition, an operator's channel line-up would consist of blank screens because most consumers will not have digital television receivers or converters

allowing them to display digital signals on their analog sets. Cable programmers oppose a dual carriage requirement because they fear being dropped or being unable to gain carriage due to the addition of digital television signals to a cable operators' channel line-up.

11. There was support for the "either-or" proposal, particularly from the public interest community. The United Church of Christ and other consumer advocates, filing jointly ("UCC"), believe that this middle-ground proposal, as it applies to commercial television stations, is the "most market friendly and statute friendly" solution. They state that as penetration of digital receivers increases, compatibility between digital television receivers and cable equipment improves, and broadcasters finalize business plans for their new digital signal, each broadcaster can decide which of its signals it would prefer to be carried. UCC believes this option will help speed the transition to digital, preserve local broadcasting, and avoid duplicative signals that reduce diversity.

12. After reviewing the extensive comments on the central issue of dual carriage during the transition period, we find it is unjustified for the Commission to act at this time in light of the constitutional questions the subject presents, including the related issues of economic impact. We need further information on a range of issues, including cable system channel capacity and digital retransmission consent agreements to build a substantial record upon which to develop the best policy for the various entities impacted in this area. Notwithstanding our decision to obtain further comment on these matters, it is important to clarify that broadcast stations operating only with digital signals are entitled to mandatory carriage under the Act. We find that the burden on a cable operator to carry such stations is de minimis, with regard to new digital-only stations, and is essentially a trade-off in the case of a station substituting its digital signal in the place of its analog signal. To implement this clarification, we amend § 76.5, the definition of television broadcast station, and specifically include the digital television Table of Allotments found at § 73.622 of the Commission's rules.

A. Commercial Television Stations

13. Section 614(a) of the Communications Act of 1934, as amended, provides:

> *Carriage Obligations.*—Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

This section requires carriage for local commercial stations subject to the other provisions of section 614. This section does not distinguish between analog and digital signals and supports the argument that digital signals are entitled to mandatory carriage. A similar provision, section 615(a), requires carriage of noncommercial stations, as discussed more fully below.

14. More specific to this proceeding, section 614(b)(4)(B) provides that the Commission "shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards." Commenters offer differing interpretations of this section. NAB and other broadcasters argue that section 614(b)(1)(B) neither distinguishes between digital and analog signals nor establishes a transition period. Therefore, they contend, both should be carried simultaneously and immediately. In contrast, NCTA and others in the cable industry argue that the phrase, "which have been changed," means that cable operators should be required to carry digital signals only when analog signals have been changed to digital signals, i.e., when the broadcasters no longer have both. NCTA further argues that the Commission may not order mandatory carriage of both the DTV and analog signals during the transition period because the Commission is not expressly authorized to do so in the Act, and, based on section 624(f), the Commission's authority may not be inferred. We do not accept the arguments of either those commenters who say that the statute forbids dual carriage; nor those who argue that the statute compels dual carriage.

15. With respect to carriage of digital-only signals, we do not agree with NCTA's interpretation to the extent that it is intended to suggest that this section requires a television station to wait until the end of the transition period before seeking digital signal carriage. There is nothing in the plain language of the statute or the legislative history to require such a restrictive reading. Indeed, as we noted above, section 614(a), which imposes carriage obligations on cable systems, does not distinguish between digital and analog signals. Thus, when a television station seeks carriage, the cable system must oblige regardless of whether the signal is in an analog or digital format, and provided that the station satisfies all other provisions of the Act and the Commission's rules.

16. We also disagree with NCTA's argument that section 624(f) of the Act prohibits us from requiring the carriage of digital television signals. This particular section forbids Federal agencies and others from requiring the content of cable services except as expressly provided for in Title VI. Given that Congress has spoken to the issue of digital broadcast signal carriage in section 614(b)(4)(B), and given such carriage is not barred under another statutory provision, digital broadcast signal carriage fits within the express requirement of section 614(a) and thus is 'expressly authorized' within the meaning of section 624(f). As such we do not believe that the Commission is outside the scope of its authority to impose such requirements simply because the signals in question are in a digital rather than in an analog format.

B. Noncommercial Television Stations

17. The importance of ensuring that noncommercial educational stations are accessible to the viewing public is consistently emphasized in the Act itself and its legislative history. Indeed, the Act mandates that cable operators devote additional channel capacity for the carriage of noncommercial educational television stations ("NCEs"). Congress found "a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial stations."

18. As stated above, section 614(b)(4)(B) requires the Commission to initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems that are necessary "to ensure cable carriage of such broadcast signals of local commercial television stations * * * " (emphasis added). In the NPRM we asked how, if at all, carriage rights for digital noncommercial educational stations are affected given that they are not explicitly discussed in this section.

19. We believe that the government's interest in ensuring the availability of local noncommercial educational television on cable systems is manifest. Section 615(a) states that "[E]ach cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section." Section 615(a) does not distinguish between digital and analog signals with regard to the "signals" that

must be carried. The Act does not contain any words or provisions specifically excluding the carriage of NCE digital television signals. The legislative history of the Act is also devoid of any language suggesting that Congress intended to deny mandatory carriage to digital NCE station signals. In addition, there is an implication in section 336 and its legislative history that Congress intended the Commission to address all must carry issues in the section 614(b)(4)(B) proceeding, including those relating to noncommercial educational stations covered by section 615. Section 336 applies only to advanced (digital) television services; it has no application in the analog context. Section 336(b)(3) specifies that ancillary and supplementary services have no mandatory carriage rights under section 614 or 615, which necessarily contemplates some consideration of must carry under section 615 for noncommercial educational stations. The legislative history of the conference agreement for this section states: "With respect to (b)(3), the conferees do not intend this paragraph to confer must carry status on advanced [digital] television or other video services offered on designated frequencies. Under the 1992 Cable Act, that issue is to be the subject of a Commission proceeding under section 614(b)(4)(B) of the Communications Act." The most logical inference is that Congress contemplated that the Commission would address the issue of must carry for digital signals in the proceeding authorized by section 614(b)(4)(B), which would cover both local commercial and noncommercial television stations.

20. We therefore find that the digital signals of NCE stations are to be treated like their commercial counterparts for cable carriage purposes. Thus, NCE stations that broadcast only in digital are entitled to immediate carriage by cable systems, subject to the parameters set forth in section 615 of the Act and the relevant Commission orders. And, like our decision with regard to commercial television stations, we decline to address the dual carriage issue for NCE stations in this phase of the proceeding.

21. AAPTS argues that the Commission should clarify the qualifying statutory term, "Grade B Service Contour." AAPTS asserts that this provision should be read to refer to a station for which either the Grade B service contour of the station or its digital coverage contour, whichever is larger, encompasses the principal headend of the cable system on which the station seeks carriage. Given that this matter is tied to the dual carriage issue, we decline to address the merits of AAPTS's Grade B argument at this juncture.

IV. Retransmission Consent Issues

22. Section 325 contains the Act's retransmission consent provisions. The law governing retransmission consent generally prohibits cable operators and other multichannel video programming distributors from retransmitting the signal of a commercial television station unless the station whose signal is being transmitted consents or chooses mandatory carriage. Every three years, analog commercial television stations must elect to either grant retransmission consent or pursue their mandatory carriage rights.

23. The NPRM raised numerous issues related to retransmission consent that can be resolved in this Report and Order. The issues are as follows: whether separate retransmission consent/must carry elections are permitted for the analog and digital signals of a broadcast station; whether the timing of the election cycle must be modified; whether a broadcaster may agree to partial carriage of its digital signal; whether the digital replacement signals for analog superstations should be treated as new signals for purposes of the retransmission consent provisions or should have the same status as the ones they replace; whether to extend the prohibition on analog exclusive retransmission consent agreements to the digital context; whether the Commission should prohibit analog-digital signal tying arrangements; and the status of NCE stations under section 325.

24. *Separate Analog and Digital Carriage Agreements.* Prior to the NPRM in this docket, many broadcasters commented that the retransmission consent process should apply separately to the analog and digital broadcast signals. Commenters argued that separate must carry/retransmission consent elections should be allowed. In the NPRM, we renewed this inquiry. NAB argues that a television station is entitled to separate elections because of the different level of bargaining power between the broadcaster and the cable operator with regard to each signal. NCTA asserts that a broadcaster's digital signal is not entitled to must carry rights during the transition: therefore, as long as a licensee is transmitting an analog signal, its digital signal can only be carried pursuant to retransmission consent. NCTA states that, in this respect, the digital signal is no different from any other signal, such as a distant television signal, that has no must carry rights; for those signals, as well as the transitional digital signal, the Act simply does not provide for a choice.

25. With regard to those stations that simultaneously broadcast analog and digital television signals, we conclude that a broadcaster is permitted to treat the two differently for carriage purposes. That is, a television station may choose must carry or retransmission consent for its analog signal and retransmission consent for its digital signal. This policy approach is taken under section 325(b)(1)(A) of the Act, rather than section 325(b)(1)(B), because we do not resolve the dual carriage question at this time. This policy permits the same broadcaster to negotiate a retransmission consent agreement for some or all of its digital signal, if that is what it desires. Our decision here is intended to further the digital transition because we believe cable operators would be more willing to carry certain streams of digital content or ancillary or supplementary data if it is offered by a particular television station, even if that station chose must carry for its analog signal. We believe this scenario would be precluded if we were to prohibit a station from making such a selection.

26. We also find that DTV-only stations may choose either retransmission consent or mandatory carriage like their analog counterparts. The retransmission consent rules and regulations contained in § 76.64 would likewise apply to digital broadcast television signals.

27. *Modification of the Election Cycle.* In the NPRM, we indicated that the Act requires local commercial television stations to elect either must carry or retransmission consent on a triennial basis. We noted that new television stations can make their initial election anytime between 60 days prior to commencing broadcast and 30 days after commencing broadcast with the initial election taking effect 90 days after it is made. We asked whether the existing cycle should be altered to accommodate the introduction of digital television or if we should apply the current "new station" rule to digital signals. Pappas submits that a station commencing digital operations during the middle of an election cycle should be treated as a new station and permitted to make its election for the DTV transmission at any time between the 60th day prior to commencement of such transmissions and the 30th day thereafter. We believe that the Commission's existing new station rules should be used in the digital carriage context. The existing requirements are non-controversial and both cable operators and broadcasters

are well accustomed to their use. Thus, for television stations broadcasting only a digital signal, the current rules applicable to new analog signals would apply. Our holding here would also apply to new digital-only noncommercial television signals, even though they are not specifically covered by § 76.64 of the Commission's rules.

28. *Retransmission Consent Agreements for Partial Digital Signal Carriage.* In the NPRM, we recognized that in the analog context "any broadcast station that is eligible for must carry status, although it may be carried pursuant to a retransmission consent agreement must * * * be carried in the entirety, unless carriage of specific programming is prohibited * * * pursuant to our rules." We stated, however, that it may be desirable to allow partial carriage of digital signals pursuant to the retransmission consent process if that is what the parties agree to. ALTV argues that permitting cable operators to negotiate for partial carriage of DTV signals would place broadcasters in an untenable position because cherry picking of programming would harm the underlying economics of free, over-the-air television. Morgan Murphy asserts that, in the event a broadcaster elects a multicasting format for its DTV signal, retransmission consent should apply to the entire digital signal not for each programming stream.

29. We conclude that for purposes of promoting the transition and encouraging voluntary cable carriage of broadcast digital signals when a television station chooses retransmission consent, the broadcaster and cable operator may negotiate for partial carriage of a local digital television signal. "Partial" carriage may be considered in any number of ways, including hours, bits or programming streams. We believe that this policy, which applies to digital-only television stations and television stations with both analog and digital signals, will benefit both parties and help to accomplish the Congressional goal of transitioning to digital television. In this instance, the broadcaster gains access to cable subscribers for some part of its signal, and the cable operator can conserve channel capacity and carry that programming which it believes subscribers will want. We note that this policy is a departure from the Commission's analog carriage rules that require a cable operator to carry local television signals in their entirety. In 1994, the Commission interpreted section 325 to provide that broadcasters may bargain with cable operators for the right to carriage of any part of the broadcast signal only when such station is not eligible under the provisions of section 614, either because it is not a local commercial broadcast signal or it does not qualify for mandatory carriage. In interpreting the statute in 1994, the Commission noted that the statutory language would appear to permit broadcasters to negotiate with cable operators for retransmission consent for any part of their signal. The Commission found that some negotiated partial carriage was clearly permitted based upon the language in section 325 but concluded that, as a matter of policy, the statutory provisions should be read in concert to require carriage of "must-carry qualified stations" in their entirety even in the context of retransmission consent. We adopt a different approach here because the statute gives the Commission flexibility to devise new rules for digital carriage when necessary. We believe that in the case of digital signal carriage, the provisions should be read to permit the parties to freely negotiate for partial carriage in the context of retransmission consent. The goal of facilitating the transition to digital signals is furthered by this interpretation because cable operators are likely to negotiate retransmission consent agreements with more stations if carriage of something less than the full complement of a broadcaster's digital signal is permitted. This outcome may accelerate the digital transition in many markets. In arriving at this determination, we considered that prohibiting partial carriage in the context of retransmission consent would not only discourage voluntary carriage of programming subject to mandatory carriage, but would also be likely to preclude the carriage of desirable programming streams or data services that are not subject to mandatory carriage. We do not find "cherry picking" to be a major concern, as ALTV believes, as long as the cable operator has the broadcaster's permission to select which programming will be carried. We conclude that permitting partial carriage in the context of retransmission consent is appropriate at least for the duration of the transition. When the transition is completed or substantially underway, we can consider whether partial carriage continues to be necessary to facilitate carriage of digital signals over the long term.

30. *Retransmission Consent Exemption for Superstations.* Section 325(b)(2)(D) exempts cable operators from the obligation to obtain retransmission consent from superstations whose "signals" were available by a satellite or common carrier on May 1, 1991. This provision's legislative history states that an exemption from retransmission consent was necessary "to avoid sudden disruption to established relationships" between superstations and satellite carriers. United Video has explained that the exemption permits it to continue to uplink superstations signals and transmit them to cable operators and other facilities-based multichannel video providers. We will treat the digital signals of superstations the same as their analog signals for retransmission consent purposes. If the analog signal was exempt from section 325, it follows that the station's digital signal is also exempt. We believe that maintaining the status quo and tracking the Act's original intent will permit video program distributors to continue to uplink superstation signals and provide them to cable operators and their subscribers. This policy may speed the transition, and the purchase of digital television equipment, because cable operators may transmit digital superstations into markets where a full array of digital television services may be lacking.

31. *Prohibition on Exclusive Agreements.* In the Must Carry Order, we specifically prohibited exclusive retransmission consent agreements between television broadcast stations and cable operators. Congress recently codified the Commission's exclusive retransmission consent prohibition as one of the many amendments to section 325 under the SHVIA. The Act now states that a broadcaster cannot enter into an exclusive retransmission consent arrangement with any MVPD until 2006. We have recently implemented the statutory ban on exclusive arrangements. Consistent with the new provision and rule, we apply the current prohibition on exclusive retransmission consent agreements to negotiations involving the carriage of digital television broadcast signals until January 1, 2006.

32. *Retransmission Consent Tying Arrangements.* With regard to retransmission consent and its effect on small cable operators, the NPRM asked whether the Commission should prohibit "tying" arrangements, in which the broadcaster requires the operator to carry the broadcaster's digital signal as a precondition for carriage of the analog signal. The Small Cable Business Association ("SCBA") states that unregulated analog retransmission consent demands, and tying in particular, pose a major threat to small cable's financial viability. To remedy the situation, SCBA urges the Commission to prohibit broadcasters

from tying analog carriage to digital carriage.

33. While we acknowledge the important concerns raised by SCBA, we will not adopt rules specifically prohibiting tying arrangements at this time. In coming to this conclusion, we recognize that substantial evidence must be presented to support a claim that a tying arrangement exists and that the operator suffers harm as a result. Without proof to support the case, it is difficult for the Commission to formulate an appropriate remedy. We also note that broadcasters now must bargain in good faith with small cable operators, or any other MVPD, under recent revisions to the retransmission consent rules pursuant to amendments promulgated under the SHVIA. One example of a bargaining proposal presumptively consistent with the good faith negotiation requirement is a proposal for carriage of the analog broadcast signal conditioned on carriage of any other broadcaster-owned programming stream, such as the digital signal. While such arrangements are now permitted, we will continue to monitor the situation with respect to potential anticompetitive conduct by broadcasters in this context. If, in the future, cable operators can demonstrate harm to themselves or their subscribers due to tying arrangements, we will be in a better position to consider appropriate courses of action.

34. *NCE Stations.* Section 325 of the Act expressly states that NCE stations do not have retransmission consent rights. As such, an NCE station cannot withhold its signal from being carried by any MVPD. An NCE station, however, is free to negotiate with cable systems and other MVPDs for voluntary carriage. In the digital context, an NCE station may multiplex its digital signal and air several video programming streams at once. In this regard, we note that an NCE station, because it is not covered by section 325, may enter into an exclusive digital carriage arrangement for any service it may offer or any programming stream that is not subject to a mandatory carriage requirement under section 615 and our findings herein. Against this backdrop, we expect cable operators and other MVPDs to participate in discussions with NCE stations concerning the voluntary carriage of their digital broadcast signals.

V. Digital Broadcast Signal Carriage Requirements

A. Channel Capacity

35. *Definition.* Section 614(b)(1)(B) provides that a cable operator, with more than 12 usable activated channels, shall not have to devote more than "one-third of the aggregate number of usable activated channels" for the carriage of commercial television stations. Despite this language, there is some dispute as to how the terms "usable activated channels" and "cable system capacity" should be defined in the digital context. We requested comment on the definition of "usable activated channels" for digital television carriage purposes. We noted that many cable operators now have, or soon will have, the technical ability to fit several programming services into one 6 MHz cable channel. Thus, we asked how advances in signal compression technology should affect the definition of channel capacity. We also asked whether the one-third channel capacity requirement for digital broadcast television carriage purposes means one-third of a cable operator's digital channel capacity or one-third of all 6 MHz blocks, including both the analog and digital channels.

36. Under the Act, a cable operator must make available for signal carriage purposes up to one-third of its usable activated channels. Because of the development of digital signal processing and signal compression technologies, the number of video services carried on a cable system is no longer a simple calculation and may change dynamically over time depending on the amount of motion in the video content, the amount of compression that takes place, and whether the service in question is carried in a standard or high definition digital format. We have taken these developments into consideration in revising the channel capacity determination.

37. The channel capacity calculation can be made by taking the total usable activated channel capacity of the system in megahertz and dividing it by three. Megahertz ("MHz") is a unit of frequency denoting one million Hertz or one million cycles per second and is closely tied to bandwidth. The telecommunications bandwidth is typically measured in Hertz for analog communications. For example, an analog NTSC television channel occupies a bandwidth of 6 MHz. In digital communications, bandwidth is typically measured in bits per second identified by a specific method of encoding. For example, an HDTV channel encoded in 8 VSB, would occupy a digital bandwidth of about 19.4 megabits per second ("mbps") which, in turn, would require a 6 MHz bandwidth. In digital cable operations, where a 64 QAM encoding technique is used, that same 6MHz bandwidth can provide up to 27 mbps of digital bandwidth. That would mean a 6 MHz bandwidth in such a cable system can carry a 19.4 mbps HDTV channel and still be able to provide other video or data services with the remaining 7.6 megabits in that same 6 MHz bandwidth. See also Newton's Telecom Dictionary, 11th ed., July 1996. One third of this capacity, defined in megahertz, is the limit on the amount of system spectrum that a cable operator must make available for commercial broadcast signal carriage purposes. Carriage requests would then have to be accommodated to the extent of this limit in whatever format and by whatever technique is appropriate and is otherwise consistent with the rules. We believe, out of the options presented in the NPRM, this is the easiest for the operator to calculate. While a calculation based on programming or bits may be possible, both are more difficult than the megahertz method to quantify cable capacity for purposes of the one-third statutory cap. In a digital environment, as cable operators reallocate spectrum from analog to digital, the digital programming and bit carrying capacity of the cable system changes. The concept of bits and bit rates is applicable to digital programming signals, but not to analog programming signals. Thus, there is no way to express the part of a cable system's capacity attributable to analog programming in terms of bits. Therefore, neither programming nor bits provide a constant that can easily be applied to determine channel capacity. In contrast, the number of megahertz employed by a cable system stays constant and does not vary as the allocation of spectrum from analog to digital progresses.

38. To determine the one-third cap for broadcast signal carriage purposes, the first step is to determine the number of "usable activated channels" on the cable system. "Activated channels" would continue to be defined by § 76.5(nn), per section 602(1) of the Act, as those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use. "Usable activated channels," would continue to be defined by § 76.5(oo), per section 602(19) of the Act, as those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. Thus, this calculation

includes but is not limited to the cable spectrum used for internet service, pay-per-view and video-on-demand, and telephony. Next, the number of usable activated channels is expressed in megahertz and then divided by three to determine the one third cap. For example, if a cable system's downstream operation begins at 54 MHz and continues through 550 MHz, but 50 MHz is unactivated, the total amount of usable channels on a system-wide basis is 446 MHz (i.e. 550 MHz-54 MHz-50 MHz). One-third of this figure, approximately 149 MHz in this example, is the maximum amount of megahertz to be used for the carriage of local commercial television signals for such a system. A cable operator must provide each local television station that is entitled to mandatory carriage with a sufficient amount of capacity to carry its primary digital video signal. The amount of capacity devoted to carriage purposes for each television station will change as an operator upgrades to a digital cable standard. For example, a cable operator with an analog-based cable system would devote 6 MHz of bandwidth to the carriage of a high definition television signal, but a cable operator using the 64 QAM digital format may only have to devote 4 MHz to the carriage of that same high definition signal.

39. *Carriage Priority.* In the NPRM, we recognized that when the one-third capacity limit has been reached, section 614(b)(2) provides that "the cable operator shall have discretion in selecting which such stations shall be carried on its cable system." We tentatively concluded that this statutory directive would continue to apply in the digital context. In the alternative, we asked whether it would be desirable to adopt carriage priority rules. ALTV, Trinity, and Univision emphasize that if the one-third cap remains in place, a station's analog signal should not be displaced in order to accommodate a DTV signal. Sinclair asserts that in those instances in which carriage of all analog and DTV stations would occupy more than one-third of such cable systems' capacity, the Commission should forbear from applying this limit and require full carriage of these broadcast signals. We find that the Act provides a cable operator with discretion to choose which signals it will carry if it has met its carriage quota. Thus, a cable operator should be able to select which signals to carry above the one-third limit. Under the existing carriage structure, all local commercial television signals that are carried, whether they have chosen retransmission consent or must carry, are counted as part of the one-third cap calculation. This policy of counting retransmission consent stations will continue to apply in the digital carriage context.

40. *NCE Stations.* We recognize that the carriage of NCE stations is not included in the one-third statutory cap. Instead, a cable operator's carriage obligations are based on the number of channels on a particular cable system. Generally, cable systems with 12 or fewer activated channels shall carry 1 qualified NCE; cable systems with 13–36 channels shall carry up to 3 qualified NCEs; and cable systems with 36 or more activated channels shall carry 3 or more qualified NCEs. We see no reason to depart from the existing rules regarding NCE carriage. As such, cable systems with the capacity to carry 36 or more channels will be required to carry 3 or more qualified NCE stations, subject to the other provisions of the Act and our rules.

B. Signal Quality

41. Section 614(h) of the Act specifies that, to qualify for carriage, stations must deliver a good quality signal to the principal headend of the cable system. For local commercial television stations, this is defined as a signal level of −45 dBm for UHF signals and −49 dBm for VHF signals. The Act delegated to the Commission the authority to establish good quality signal criteria for low power television stations and for qualified local noncommercial educational television stations. We held that the commercial television station definition of good quality signal be applied in the same manner to noncommercial and LPTV television stations under the UHF/VHF paradigm.

42. In the NPRM, we asked whether the signal quality standards established for analog signals are relevant for digital signals or whether new parameters for good signal quality should be established. No commenters addressed this issue. Absent comment for or against either alternative, we undertook our own analysis relying on the digital engineering methods and expertise developed in other proceedings. We note that in adopting the digital television transmission standard, the Commission recognized the differences between analog and digital television signals. The analog NTSC transmission standard is engineered so that even when a station's signal strength slowly decreases, a television set is still able to display the video and audio components, albeit at a degraded level. On the other hand, under the DTV transmission standard, as the station's signal level decreases, the digital television set continues to display a good picture, but then may abruptly turn blue when the signal strength drops below a certain threshold. This is known as the "cliff effect." That is, if a signal is received, a good quality picture can be constructed at the television receiver; however, once the signal falls below a minimum signal level threshold, no picture can be reconstructed or displayed by the television receiver. Against this backdrop, we believe it is necessary to develop a new reception standard aptly suited to the new digital technology used to transmit digital television signals.

43. We conclude that the signal level necessary to provide a good quality digital television signal at a cable system's principal headend is −61 dBm. We continue to believe that the principal headend should remain the location for signal quality testing purposes because that is the single location where all available signals can be uniformly measured and compared. We arrive at this minimum signal level by using the following planning factors:

Thermal Noise in 6 MHz bandwidth
N_t −106.2 dBm
Receiver Noise Figure
N_f 10.0 dB
Required Carrier to Noise Ratio
C/N 15.2 dB
Propagation and implementation margin
M 20.0 dB
Receiver input
$= (N_t+N_f+C/N+M) = -61$ dBm

We believe that providing for a 20 dB propagation variability and signal impairment margin ("margin") above the minimum signal-to-noise ratio is sufficient to handle most over the air transmission disturbances encountered by a DTV signal at a cable system headend. These disturbances will likely include signal impairments such as multipath, impulsive (manmade) noise, and co-channel and adjacent channel interference. The video and audio quality of a digital television signal remain good as long as the signal-to-noise ratio is in excess of the minimum signal-to-noise ratio applicable to the transmission system after consideration of the summation of all noise factors (such as channel and manmade noise, noise generated by multipath cancellation, receiver noise, and co-channel interference). The tradeoff table in § 73.623(c)(3)(ii) is an example of the relationship of signal margin to one type of interference: Analog signals on the same frequency. The table shows that, as the margin increases, the strength of the desired signal can be much less when compared to the strength of the

interfering signal, and still produce good quality video and audio. The primary source of erosion of the signal margin will be propagation variations of the received signal level with time. These variations result in what is generally called signal fading. However, we believe that these variations of the received signal level and the amount of signal impairments cumulatively, should be significantly less than the allowed 20 dB margin. We believe that when a signal level of −61 dBm is delivered to the cable system headend, the signal will be of sufficient strength that the cable operator can deliver a good quality picture to its subscribers. A television station that does not agree to be responsible for the costs of delivering to the cable system a signal of good quality, under the revised standard, is not eligible for carriage.

C. Content of Signals Subject to Mandatory Carriage

44. We now address the specific content of a digital television signal that is subject to the mandatory carriage obligation. We note that analog broadcast stations generally have one video broadcast product. That is, only a single program is broadcast at a time and that program is the main feature of the broadcast. Only a relatively minor amount of communications capacity is available apart from that program transmission. Some capacity is available in the vertical blanking interval ("VBI") for the transmission of communications that are separate from, but related to, the principal video output or are unrelated to that content. The related content is typically closed captioning and program rating information. The unrelated content would be typified by videotext or data-type communications.

45. Digital television stations will operate on a much more flexible basis. The system described in the ATSC DTV Standard includes discrete subsystem descriptions, or "layers," for video source coding and compression, audio source coding and compression, service multiplex and transport, and RF/transmission. In addition to being able to broadcast one, and under some circumstances two, high definition digital television programs, the standard allows for multiple streams, or "multicasting," of standard definition digital television programming at a visual quality better than the current NTSC analog standard. Multiple programming streams may be broadcast at the same time or with a variety of data streams accompanying the main video content. These data streams may be either associated with the video content in some manner or completely separate from it.

46. A critical component of digital broadcast television is the program and system information protocol ("PSIP"). PSIP is a requirement for broadcasters using the ATSC standard, however, it is not required by the Commission. This is the standard protocol for transmission of the relevant data tables, describing system information and event descriptions, contained within digital packets carried in the digital broadcast transport stream multiplex. System information allows navigation of, and access to, each of the channels within the transport stream, whereas event descriptions give the user content information for browsing and selection. PSIP is composed of four main tables: system time table; ratings region table; master guide table; and virtual channel table. The latter table is of particular importance in the carriage context because it contains a list of all the channels that are or will be on-line, plus their attributes. Among the attributes are the channel name, navigation identifiers, and stream components and types. PSIP allows the broadcaster to customize information to guide viewers to channel numbers they are familiar with.

47. *Primary Video.* In the analog context it is clear that a cable operator subject to a mandatory carriage obligation is not required to carry all of the communications output of a television broadcast station. Three provisions of the Act provide the main focus of the arguments regarding this question in the context of digital broadcast signal carriage. First, section 614(b)(3) of the Act entitled "Content to be Carried," states that a cable operator shall carry in its entirety the "primary video" of the station. Second, it requires carriage of the "accompanying audio" and "line 21 closed caption transmission" of each station. Third, the operator must carry "to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers." The statute is specific that "Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator." Section 614 is applicable to the carriage of commercial stations. Largely parallel provisions are contained in section 615 relating to the carriage of noncommercial stations. In addition to the provisions that are not specific to digital television broadcasting, section 336(b)(3) of the Act which has specific applicability to "advanced television services" provides that "no ancillary or supplementary service shall have any right to carriage under section 614 or 615."

48. In the NPRM, we asked how we should define "primary video" if a broadcaster chooses to broadcast multiple standard definition digital television streams, or a mixture of high definition and standard definition digital television streams, as is permitted under the rules. We sought input on which video programming services provided by a licensee should be considered primary and should be entitled to carriage if the primary video includes less than all of the streams of programming broadcast. We asked whether the definition should be flexible, allowing the broadcaster to choose which transmissions it considers being primary.

49. Many commenters argue for an expansive approach to the classification of primary video during the transition that would include much of a broadcaster's digital programming. ALTV argues that if a licensee broadcasts several channels of free over-the-air standard definition programs, all of these channels should be considered to be the primary video transmission of the station. NAB states that there can be no primary or main program since carriage of a full broadcast signal, including multiplexed program streams, will enable a viewer to switch between channels within a given program. AAPTS asserts that all "mission-related" programming streams transmitted by a public television station should be regarded as primary and subject to mandatory carriage. Ameritech argues to the contrary, that the statutory language limiting must carry to a broadcaster's primary video indicates that Congress did not intend to require cable operators to carry all the material a station transmits. Time Warner argues that a station's analog signal is the primary video during the transition and only when a broadcaster surrenders its analog frequency and engages exclusively in digital transmissions will its digital signal become the "primary video" transmission and thus eligible for any post-transition must carry requirements adopted by the Commission.

50. We recognize that the terms "primary video" as used in sections 614(b)(3) and 615(g)(1) are susceptible to different interpretations. Because the terms are not expressly defined in the Act, to determine the meaning, we analyze the terms "primary video" within their statutory context, consider the legislative history, and examine the

technological developments at the time the must carry provisions were enacted.

51. The term primary video, as found in sections 614 and 615 of the Act, suggests that there is some video that is primary and some that is not. In this instance, we rely on the canon of statutory construction that effect must be given to every word of a statute and that no part of a provision will be read as superfluous. Here, we must give effect to the word "primary." The dictionary definitions of "primary" are "First or highest in rank, quality, or importance" and "Being or standing first in a list, series, or sequence." Based on the plain words of the Act, we conclude that, to the extent a television station is broadcasting more than a single video stream at a time, only one of such streams of each television station is considered "primary." The choice as to which, among several possible video programming streams, should be considered primary is a decision left to the broadcaster.

52. The legislative history does not definitively resolve the ambiguity regarding the intended application of the term "primary video" as used in this context. The legislative history does indicate, however, that the must carry provisions were not intended to cover all uses of a signal. Specifically, the legislative history provides that [c]arriage of other program-related material in the vertical blanking interval and on subcarriers or other enhancements of the primary video and the audio signal (such as teletext and other subscription and advertiser-supported information) is left to the discretion of the cable operator. The legislative history further states that the "Committee does not intend that this [must carry] provision be used to require carriage of secondary uses of the broadcast transmission, including the lease or sale of time on subcarriers or the vertical blanking interval for the creation or distribution of material by persons or entities other than the broadcast licensee."

53. We note that the incorporation of the primary video construct into the Act in 1992 was reasonably contemporaneous with the gradual change in common understanding of the new television service from ATV (advanced television) and HDTV (high definition television)—which focused on improving the technical quality of traditional analog NTSC television—to DTV (digital television) with the ability to broadcast high definition television, SDTV (standard definition television) with multicasting possibilities, as well as the broadcast of non-video services. Although silent on the issue of multiplexing, the legislative history indicates that Congress understood that HDTV was "not limited to improved resolution clarity, and color parity in a television image, or large television sets." Rather, Congress recognized that "[t]his advanced technology has the potential to open new and expanded markets for the components of advanced television systems (such as semiconductors, fiber optics, and flat screen displays), and to enhance the integration of the television and computer industries."

54. Based on the record currently before us, we conclude that "primary video" means a single programming stream and other program-related content. With the advent of digital television, broadcast stations now have the opportunity to include in their video service a panoply of program-related content. Indeed, far more video content is possible broadcasting a digital signal than broadcasting in an analog format. For example, a digital television broadcast of a sporting event could include multiple camera angles from which the viewer may select. The statute contemplates and our rules require that cable operators provide mandatory carriage for this program-related content. In contrast, if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage. The broadcaster must elect which programming stream is its primary video, and the cable operator is required to provide mandatory carriage to only such designated stream. While we do not believe that Congress specifically contemplated programming of the type described above (i.e., data or video that is separate from but associated with the primary video) in drafting section 614(b)(3), the policies underlying this section are consistent with our conclusion here in the context of digital signal carriage. Based on the language in 614(b)(3), Congress was concerned that mandatory carriage be limited to the broadcaster's primary program stream but also include related content as described here. In the FNPRM, published elsewhere in this issue of the **Federal Register** we seek comment on the appropriate parameters for "program-related" in the digital context.

55. *Ancillary and Supplementary Services.* Section 336 of the Act provides that "no ancillary or supplementary service shall have any right to carriage under section 614 or 615." Neither the Act nor the legislative history define the terms "ancillary or supplementary." Section 614(b)(3) of the Act requires cable operators to carry "to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers" but states that "[r]etransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator." We sought comment on possible ancillary and supplementary definitions that were consistent with the language of section 614(b)(3). Paxson states that the Commission should limit the definition of ancillary or supplementary services to those for which viewers pay subscription fees or for which the broadcaster receives compensation from non-advertising third parties, thereby establishing mandatory carriage for free over-the-air local multicasting. On the other hand, Time Warner argues that all digital video programming, other than the "main" signal which the Commission requires the broadcaster to transmit, are ancillary and supplementary.

56. With respect to the definition of ancillary and supplementary services, the Commission's DTV Fifth Report and Order states that ancillary and supplementary services include "any service provided on the digital channel other than free, over-the-air services." Section 73.624(c) of the Commission's rules specifies that "any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary." While not defining the class exhaustively, § 73.624(c) indicates that ancillary and supplementary services include, but are not limited to, "computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, [and] subscription video [video programming for which the broadcaster charges a fee]. * * *" Section 73.646 of the Commission's rules states that telecommunications services provided on the vertical blanking interval ("VBI") or in the visual signal, in either analog or digital mode, are ancillary. Based on the foregoing, we find that the services specified in §§ 73.624(c) and 73.646 are ancillary or supplementary in the context of digital cable carriage and are not entitled to mandatory carriage.

57. In addition, we believe there may be certain services associated with broadcast digital video programming that while not ancillary or supplementary, would still not be entitled to mandatory carriage because they are not program related. Currently,

in addition to a broadcaster's primary analog video programming, section 614(b)(3) requires cable operators to carry "to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers * * *" However, "[r]etransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator." In the analog context, we have specified certain factors for determining what material carried in the VBI is sufficiently program-related as to qualify for must carry rights. Due to the technical differences between digital and analog transmission, e.g., there is no VBI in a digital signal, the foregoing concepts cannot transfer directly into a digital environment. What is anticipated is that a television station will provide internet-based services, such as e-commerce applications, to the public. While this type of business plan promises to enhance a television station's digital presence, the carriage of internet offerings by a cable operator likely would not be required under the must carry provisions unless the broadcaster can demonstrate that such material should be considered program-related.

58. In this vein, we note that there are certain over-the-air digital services sufficiently related to the broadcaster's primary digital video programming that are entitled to carriage. These include, but are not limited to, closed captioning information, program ratings data for use in conjunction with the V-chip functions of receivers, Source Identification Codes ("SID Codes") used by Nielsen Media Research in the preparation of program ratings, and the channel mapping and tuning protocols that are part of PSIP. These services provide useful information to viewers, broadcasters, and/or cable operators, and are intended for use in direct conjunction with the programming. We note that independent of the "program related" and "ancillary or supplementary" concepts, cable operators are required to pass through closed captioning data contained in analog and digital video programming. In general, we will continue to use the same factors enumerated in WGN, that are used in the analog context to determine what material is considered program-related. The WGN court set out a three-part test for making a determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be available during the same interval of time as the video signal. Third, the VBI information must be an integral part of the program. The court in WGN held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal must both be carried if one is to be carried.

59. As noted, digital signals do not contain a VBI. The Commission's rule in § 76.56(e) describes what cable systems may carry in the VBI. This subsection is revised to revise the reference to VBI to take account of digital technology.

60. *Program Guides.* We sought comment on the status of advanced programming retrieval systems and other digital channel selection devices that filter and prioritize video programs for viewers. To prevent anticompetitive conduct by cable operators, Gemstar urges the Commission to require the undisturbed pass-through of electronic program guide ("EPG") related information as part of the broadcaster's digital transmission. We note that in the analog carriage context, Gemstar has requested a ruling from the Commission that its electronic program guide is program-related and must be carried by cable operators. NCTA claims that Gemstar provides no evidence that Congress intended to force cable operators to deliver any non-programming information that might be transmitted along with a broadcaster's digital signal. Ameritech and BellSouth state that there is no legal basis for the Commission to give program guides any greater carriage rights than any other ancillary or supplementary service that must obtain carriage through private negotiations with individual cable operators.

61. We find that the carriage of program guide information is a matter to be addressed under sections 614(b)(3) and 615(g)(1) of the Act. As stated earlier, all program-related broadcast material found in the analog signal's VBI must be carried, unless it is technically infeasible for the operator to do so. In the digital television context, there is no VBI for EPG information to be carried on, rather, the EPG data would be part of the PSIP. In this circumstance, we find that program guide data that are not specifically linked to the video content of the digital signal being shown cannot be considered program-related, and, therefore, are not subject to a carriage requirement.

62. *Program Access.* Section 336 of the Act states that "no ancillary or supplementary service shall * * * be deemed a multichannel video programming distributor for purposes of section 628." Section 628 contains the program access requirements pursuant to which multichannel video programming distributors are entitled to purchase on nondiscriminatory rates, terms, and conditions satellite-delivered cable programming in which a cable operator has an attributable interest. In the NPRM, we sought comment on the meaning of this language. We find that this provision was intended to prevent a digital broadcaster from asserting rights under the program access provisions contained in section 628. This provision affords certain rights to MVPDs, which are defined as entities who make "available for purchase, by subscribers or customers, multiple channels of video programming." We hold that section 336 precludes a digital television station offering video services for a fee from asserting MVPD status under our rules and claiming program access rights pursuant to section 628.

D. Duplicative Signals

63. Section 614(b)(5) of the Communications Act provides that "a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local television station which is carried on the cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network * * *" A parallel rule applies to the carriage of NCE station signals. Congress enacted these provisions to preserve a cable operator's editorial discretion while ensuring that the public has access to a diversity of local television signals.

64. In the NPRM, we recognized the import of the duplication provisions and sought comment on what approach the Commission should take with regard to this matter. In response, NCTA argues that in section 614(b)(5), Congress intended that a cable operator not be compelled to carry duplicative signals. NCTA also notes that section 614 defines a local station as a "television broadcast station * * * licensed and operating on a channel regularly assigned to its community * * *" Because the digital transmission takes place on a channel separate from the analog channel, NCTA asserts that two stations, not one, are in operation during the transition and that section 614(b)(5) should apply to programming duplicated by a broadcaster on its digital signal. UCC emphasizes that

Congress enacted section 614(b)(5) in order to "preserve the cable operator's discretion while ensuring access by the public to diverse local signals." UCC asserts that when a broadcaster's digital programming merely duplicates its analog programming, mandatory carriage of the duplicative digital programming reduces the diversity of local signals by forcing the cable operator to drop cable programming in order to free capacity, thereby undermining Congress' goals. The Broadcast Group, however, argues that identical program content transmitted in an analog and digital format constitutes two distinct program forms targeted at different audiences and that the Commission should not treat it as duplicative programming. Pappas maintains that the Commission should not construe the limitation on duplicative signals to refer to the content of a program transmitted by a signal, but rather to refer to the signal itself.

65. We recognize that reaching a conclusion on this matter is complicated by our requirements for the digital transition. The Commission established a staged implementation schedule for the introduction of digital television in the rules governing the transition. In the early stages of the transition, broadcasters have flexibility in selecting the digital programming they offer. The Commission refrained from imposing simulcasting requirements during this phase in order to afford broadcasters the freedom to experiment with program and service offerings. Thus, for example, a broadcaster's initial digital programming may be entirely original, it may simply duplicate a certain amount of its analog programming, or it may combine original digital content with analog content. Beginning April 1, 2003, the rules mandate an increasing level of duplication of program content between the analog and digital signals, eventually reaching a 100% simulcasting requirement which continues until a broadcaster's analog channel is terminated and returned to the Commission. These simulcasting requirements are intended to minimize viewer disruption as the content of the analog signal is slowly replicated on the digital signal.

66. We will not revise the duplication definitions and requirements at this time. More information is needed on the digital programming currently made available by broadcasters before we act in this regard. Such information, which is solicited in the FNPRM, will enable us to determine the appropriate duplication definitions to apply during the transition period, when two signals of the same station are available over-the-air, and afterwards. In the meantime, we will continue to administer the duplication requirements set forth in the Act and the Commission's rules. We note that duplication in this context may encompass the following situations: DTV-only station v. DTV-only station; DTV-only station v. analog station; or analog station v. analog station. That is, two commercial television stations will be considered to substantially duplicate each other "if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week." For purposes of this definition, identical programming means the identical episode of the same program series. With regard to noncommercial television broadcasters, an NCE station does not substantially duplicate the programming of another NCE station if at least 50 percent of its typical weekly programming is distinct from programming on the other station either during prime time or during hours other than prime time. This rule is applicable to digital-only and analog noncommercial stations during the transition period as well.

E. Material Degradation

67. Section 614(b)(4)(A) of the Act discusses the cable operator's treatment and processing of analog broadcast station signals and provides that the signals of local commercial television stations shall be carried without material degradation. The NPRM asked to what extent this provision precludes cable operators from altering the digital format of digital broadcast television signals when the transmission is processed at the system headend or in customer premises equipment. Under the Act, the Commission's carriage standards must ensure that, "to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal." To address this provision, the NPRM sought comment on whether the Act requires an operator to carry all local commercial television stations that broadcast in a 1080I high definition format if it carries a cable programming service such as HBO in the 1080I HDTV format.

68. We note that the Advanced Television Systems Committee ("ATSC") DTV Standard adopted by the Commission was recommended by the Advisory Committee on Advanced Television Service ("ACATS") and developed by the Grand Alliance. It provides for 19.4 megabits per second ("mbps") for each 6 MHz channel over-the-air. The Commission neither adopted a single standard for high definition television nor imposed a HDTV requirement on broadcasters. Rather, the Commission drew the distinction between standard definition ("SDTV") and high definition ("HDTV") in the digital context. The electronics industry and ATSC define high definition television as having a vertical display resolution of 720p, 1080I, or higher; an aspect ratio capable of displaying a 16:9 image at the minimum resolution level; and receiving and reproducing Dolby digital audio. In contrast, standard definition digital displays resolution lower than high definition, requires no specific ratio, and produces "usable" audio and picture.

69. NAB argues that a digital signal would be materially degraded if it were not transmitted to the viewer in the format that the broadcaster intended. MSTV states that cable systems should not be permitted to block or delete any of the bits comprising the free over the air broadcast material. Granite adds that if cable operators are not required to pass through the entire digital signal, the ability of viewers to receive and experience higher quality television programming formats will be reduced. We believe that these arguments do not address the fundamental concern of the prohibition against material degradation. From our perspective, the issue of material degradation is about the picture quality the consumer receives and is capable of perceiving and not about the number of bits transmitted by the broadcaster if the difference is not really perceptible to the viewer. Such an interpretation is consistent with the language of the Act, which applies to material degradation, not merely technical changes in the signals. This interpretation is also consistent with the Act's general mandate of ensuring that cable operators do not favor their own cable programming video services over those video services provided by broadcasters. Moreover, as discussed above, the Act prohibits mandatory carriage for ancillary or supplementary services and our rules provide that material that is not program-related is not subject to the mandatory carriage requirement. If such bitstream material that is not subject to mandatory carriage is subtracted from the entire 6 MHz over-the-air digital signal, by necessity there will be fewer than 19.4 mbps to be carried on the cable system. Moreover, whenever a

digital signal is remodulated for carriage on a cable system, fewer bits are needed than to transmit the signal over the air. A broadcaster's over-the-air HDTV signal, for example, requires 19.4 mbps, which accounts for both the programming or data, as well as an overhead data stream that includes error correction. When a cable system carries this HDTV signal using QAM modulation, it removes the broadcaster's overhead data stream and replaces it with the overhead stream appropriate for the specific cable system. Generally the resulting bit rate is somewhat less than 19.4. This reduction in bit rate does not affect picture quality and is not considered material degradation. Thus, it is inappropriate to use 19.4 mbps, or any specific number of bits, to denote what constitutes a degraded signal. The number of bits appropriate for mandatory carriage will vary based on the programming and service choices of each broadcaster.

70. With regard to defining picture quality for digital carriage purposes, Microsoft advocates that the Commission should require only that cable operators not carry non-broadcast signals at a higher quality than broadcast signals. Pappas argues, however, that a subscriber watching a HDTV digital program on cable should see the same quality picture as a consumer watching a HDTV digital program over-the-air. Adelphia argues that as long as high definition broadcast signals are retransmitted in either the 1080I or 720p format, the alteration of the digital television signal's format does not constitute material degradation. We agree with Microsoft and find that language of the Act provides the answer to the material degradation question. Section 614(b)(4)(A) requires that cable operators shall provide the same "quality of signal processing and carriage" for broadcasters" signals as they provide for any other type of signal. Consequently, in the context of mandatory carriage of digital broadcast signals, a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer (e.g., non-broadcast cable programming, other broadcast digital program, etc.) carried on the cable system, provided, however, that a broadcast signal delivered in HDTV must be carried in HDTV. This result also protects the interests of cable subscribers by focussing on the comparable resolution of the picture, as visible to a consumer, rather than the number of lines or bits transmitted, which may not make a viewable difference on a consumer's equipment. We recognize that it may be especially burdensome for small systems with limited channel capacity (such as systems with fewer than 330 MHz) to carry a HDTV signal if they are not otherwise providing any HDTV programming. In this regard, we note that mandatory carriage is limited to one-third of the cable system's capacity, as defined infra. We also recognize that carriage of a HDTV signal using 8 VSB pass-through may require the allocation of more than 6 MHz of bandwidth due to the difference in channel alignments between broadcast over-the-air transmission and cable carriage. An 8-VSB pass-through of a broadcast station may straddle two cable channels and result in the loss of additional channels in the system (i.e., the cable operator is not able to use these additional channels to carry other programming). Therefore, if a small system, which is not otherwise carrying any HDTV signals, is required to carry a broadcast signal in HDTV such that it straddles two channels in this way, it may include all of its lost spectrum when calculating its one-third capacity.

71. We also find that for purposes of supporting the ultimate conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its HDTV or SDTV television signals be carried on the cable system for delivery to subscribers in an analog format. We do not believe the conversion of a digital signal to an analog format under these specific and temporary circumstances is precluded by the nondegradation requirement in sections 614(b)(4)(A) and 615(g)(2). Many cable subscribers do not yet have television sets capable of receiving or displaying digital signals in their fully advanced format. Thus, if we were to mandate digital-to-digital transmission at this stage of the transition period, cable subscribers would be unable to properly receive the signals. Obviously this was not the intended goal of the nondegradation requirement in sections 614(b)(4)(A) and 615(g)(2). Allowing digital-to-analog conversion for a limited time during a critical stage of the transition period will further the digital transition because a television station would be more willing to return its analog spectrum to the government, and convert to digital service, knowing that cable subscribers without digital equipment may still be able to view the relevant programming. We recognize, that permitting digital-to-analog conversion will not provide an impetus for cable subscribers to purchase digital television sets, but will allow new digital stations and stations that return their analog spectrum to continue to reach cable subscribers who have only analog receivers while commencing over-the-air service to attract and reach non-cable viewers who purchase digital television sets. With these points in mind, we will allow a television station to provide one of its digital signals to cable systems in an analog format only during the early stages of the transition period. We will revisit this policy after 2003 to ensure that this policy is fostering the conversion to digital television service and to determine when equipment is available so that broadcast signals can be delivered and carried in digital format. We understand that for some time the technology has been available to manufacture cable boxes that can either deliver a digital signal to the subscriber's digital equipment or downconvert the signal to be displayed on analog equipment. Apparently there is not as yet sufficient demand to produce these boxes for retail purchase or for rental from the cable operator. We will monitor the market's progress to ensure that our permission for analog conversion at the headend does not interfere with the marketplace availability of such boxes. As the transition moves forward, television broadcast stations will be required to deliver their signals in digital format and cable operators will be required to carry them in digital format, as discussed above.

72. *Measurement.* The NPRM asked what standards and measurement tools were available to address disputes relating to the quality of the digital broadcast television signal. We also asked how, and where, degradation should be measured. To determine if an operator is materially degrading a digital signal, the signal should be tested at the input terminal of either the television set or set-top box if the subscriber owns that piece of equipment. The signal should be tested at the output point of the set top box if the subscriber rents that equipment from the cable operator. We believe that this location, rather than the headend, will best capture the signal's strength and characteristics after being processed by the cable plant. Broadcasters and cable operators may use commercially available devices to detect signal degradation. We do not endorse any particular model, but stress that such equipment must meet sound engineering practices and good equipment specifications.

73. *Digital Modulation Techniques.* We are mindful that digital television signals are transmitted in the 8 VSB digital broadcast modulation technique

while operators will use either 64 or 256 QAM as the cable digital modulation technique. Both 64 and 256 QAM likely will provide cable operators with a greater degree of operating efficiency than does 8 VSB, and also permits the carriage of a higher data rate, with less bits devoted to error correction, when compared with the digital broadcast system. Therefore, we will permit cable operators to remodulate digital broadcast signals from 8 VSB to 64 or 256 QAM. For purposes of § 76.630 of our rules, we clarify that we do not consider the utilization of QAM modulation by a cable operator in the provision of digital cable television service to involve scrambling, encryption or similar technologies of the type referenced therein. We will not require cable operators to pass through 8 VSB. Notwithstanding this conclusion, we believe that cable pass-through of a digital broadcast signal without alteration is an option for allowing the first purchasers of digital television sets to receive digital signals from their cable systems. Under this scenario, the 8 VSB signal could pass through the cable system and the cable set-top box without change and connect to the digital television set, or the cable could bypass the set-top box and be connected to a cable coaxial connection on the digital television receiver. We believe that pass-through is an option for operators of certain cable systems that will not be providing any digital cable programming or systems not wanting to incur the additional expense of converting 8 VSB to either 64 or 256 QAM at the headend or in the set-top box, but that wish to offer subscribers digital broadcast channels. We recognize that in the long term, pass-through is not an effective solution for the majority of cable systems.

F. Set Top Box Availability

74. In the NPRM, we observed that the Act mandates that all commercial television signals shall be provided to every subscriber of a cable system and be viewable on all television receivers of subscribers that are connected by the cable operator or for which the cable operator provides a connection. Section 615(h) provides that noncommercial educational stations, that are entitled to carriage, shall be "available to every subscriber as part of the cable system's lowest price service tier that includes the retransmission of local commercial television broadcast signals." In general, most cable subscribers are able to view analog broadcast stations on analog cable-ready television sets. In the case of the new digital television service, the Commission has recently adopted labeling requirements for digital television receivers. Based on an industry agreement on technical standards, any receiver labeled as "Digital Cable Ready" will be "capable of receiving analog basic, digital basic, and digital premium cable television programming by direct connection to a cable system providing digital programming. * * * A security card (or POD) provided by the cable operator is required to view encrypted programming." The digital cable ready receivers will include QAM demodulation capability. In the case of digital television receivers that do not meet the digital cable ready criteria, a subscriber may need a set top box to view broadcast digital signals delivered via cable.

75. In the NPRM, we asked if the Act requires cable operators to offer set top boxes to every subscriber if digital television signals cannot be received without some device facilitating reception. We also asked about viewing digital television signals on analog equipment. MediaOne states that Congress did not intend for all cable subscribers to incur substantial additional costs in order to ensure that all digital broadcast programming is viewable on their televisions, especially when most of the digital programming would be duplicative of the broadcaster's analog feed. ALTV, on the other hand, believes that section 614(b)(7) should be applied to digital signals in the same manner as it is applied to analog signals.

76. We will not require a cable operator to provide subscribers with a set top box capable of processing digital signals for display on analog sets. We recognize that if we were to impose such a requirement, all subscribers would be forced to pay for equipment that converts digital programming that may be identical in content to the analog programming to which they already have access without a set top box. The result would be that subscribers without the capability of viewing digital signals and who will receive duplicate analog programming when the Commission's simulcasting requirements commence in 2003, would be required to pay for a converter box to receive duplicate digital signals. We do not believe that this result is what Congress intended in enacting section 614(b)(7).

77. Furthermore, we believe that requiring cable operators to make available set top boxes capable of processing digital signals for display on analog sets might be inconsistent with section 629 of the Act. Section 629 was enacted to ensure the commercial availability of navigation devices, the equipment used to access video programming and other services from multichannel video programming systems. Pursuant to our statutory mandate, we adopted rules to expand opportunities to purchase such equipment from sources other than the service provider. Thus, to now require cable operators to make such equipment available to subscribers would impede the overarching goal of the Navigation Devices proceeding, that is to assure competition in the availability of set-top boxes and other customer premises equipment. Moreover, we believe that as the digital television transition moves forward, subscribers will have the ability to purchase or lease a converter to permit the digital signal to be displayed on their analog televisions. We also expect that a conversion function is one which manufacturers may consider adding to digital set-top boxes. We note that the Commission's navigation devices rules allow manufacturers the ability to incorporate additional features and functions in set-top boxes, and to sell those boxes at retail. As such, subscribers will be able to view both the analog and digital signals as the competitive market develops. Further, our decision ensures that the option to pay for a converter or digital set-top box with that function remains at the discretion of the cable subscriber and is not mandated through government regulation.

G. Channel Location

78. Section 614(b)(6) generally provides that commercial television stations carried pursuant to the mandatory carriage provision are entitled to be carried on a cable system on the same channel number on which the station broadcasts over-the-air. Under section 615(g)(5) noncommercial television stations generally have the same right. The Act also permits commercial and noncommercial television stations to negotiate a mutually beneficial channel position with the cable operator. In seeking comment on the applicability of these types of requirements in the digital context, we noted that station licensees received new digital broadcast frequency assignments and channel numbers that are different from their analog channel numbers. We pointed out that the advent of advanced programming retrieval systems and other channel selection devices may alleviate the need for specific channel positioning requirements. In this regard, the ATSC established channel identification protocols, or PSIPs, that link the digital channel number with

that assigned to the analog channel. Given these developments, we asked whether the Commission should refrain from promulgating digital channel positioning requirements and allow technology to resolve the matter.

79. In the digital environment it is generally anticipated that broadcast signals will be identified and tuned to through the PSIP information process rather than by identification with the specific frequency on which the station is broadcasting. Given the new digital table of allotments, we find that there is no need to implement channel positioning requirements for digital television signals of the same type currently applicable to analog signals. Rather, as the majority of commenters have suggested, we find that the channel mapping protocols contained in the PSIP identification stream adequately address location issues consistent with Congress's concerns about nondiscriminatory treatment of television stations by cable operators. We believe this technology-based solution will resolve broadcaster concerns. PSIP assures that cable subscribers are able to locate a desired digital broadcast signal and ensures that digital television stations are able to fairly compete with cable programming services in the digital environment. Therefore, as stated in the content-to-be-carried section above, a cable operator will be required to pass-through channel mapping PSIP information as it is considered to be program-related to the primary digital video signal. We point out that questions related to the technical aspects of PSIP are being dealt with by the cable and consumer electronics industry as they proceed with establishing digital cable-consumer equipment compatibility standards. We note again that the Commission has asked for PSIP progress reports as part of the digital cable compatibility proceeding.

H. Market Modifications

80. Commercial television stations have carriage rights throughout the market to which they are assigned by Nielsen Media Research. Pursuant to section 614(h)(1)(c) of the Act, at the request of either a broadcaster or a cable operator, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of the Act's must carry provisions. In considering such market modification requests, the Act provides that the Commission shall afford particular attention "to the value of localism" by taking into account such factors as whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; whether the television station provides coverage or other local service to such community; whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community. The inclusion of additional communities within a station's market imposes new must carry requirements on cable operators subject to the modification request while the grant to exclude communities from a station's market removes a cable operator's obligation to carry a certain station's signal on the relevant system. We sought comment on whether any change to the market modification process was warranted to accommodate the difference between analog and digital broadcasting.

81. We find that our current reliance on Nielsen's market designations, publications, and assignments for analog signal carriage issues should continue for digital signal carriage issues. The presumption, therefore, is that the market of the station's digital signal is coterminous with the station's market area for its analog signal during the transition period. In addition, we find that the statutory factors in section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, will be applicable to digital television cases during the transition period. We realize, of course, that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of the analog television signal. Therefore, in deciding DTV market modification cases, we will take into consideration changes in signal strength and Grade B contour coverage because of new digital television channel assignments and power limits. All other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.

I. Digital Signal Carriage on PEG Channels

82. The Act provides that a cable operator required to add the signals of qualified local noncommercial educational stations and qualified low power television stations, respectively, may do so by placing such additional stations on unused public, educational or governmental ("PEG") channels not in use for their designated purposes, subject to the approval of local franchising authorities. Pursuant to section 611 of the Act, the local franchising authority, in discussions with a cable operator, determines how much channel capacity, if any, will be set aside for PEG use. The Commission, when implementing the analog must carry rules, declined to adopt stringent requirements regarding the use of PEG channels for must carry purposes because it believed that these matters were more appropriately resolved by local franchising authorities. We sought comment on whether DTV signals of NCE stations and LPTV stations should be allowed on PEG channels under the same framework accorded analog television signals. We agree with comments submitted by CBA and Pappas that the carriage of digital LPTV and NCE stations on unused PEG channels should be permitted. We find that this approach will likely advance the digital transition by allowing another way for cable subscribers to access digital NCE signals. We also find that continuing this policy will promote program diversity by enabling LPTV analog signals and NCE analog and digital signals, that otherwise may not be afforded carriage, to reach their intended audience. To this end, we encourage local franchising authorities to engage digital public broadcasters and low power broadcasters in discussions concerning the carriage of their respective broadcast signals.

J. Complaints and Enforcement

83. Under our current rules, whenever a television station believes that a cable operator has failed to meet its must carry obligations, the station may file a complaint with the Commission. Section 614(d)(3) requires the Commission to adjudicate a must carry complaint within 120 days from the date it is filed. The Commission may grant the complaint and order the cable operator to carry the station or it may dismiss the complaint if it is determined that the cable operator has fully met its must carry obligations with regard to that station. We sought comment on whether the current procedures should apply to DTV must carry complaints. We agree with AAPTS that the current scheme is working and see no need to depart from it. Therefore, we will continue to use the existing must carry complaint process for digital television carriage disputes.

VI. Changes to Other Part 76 Requirenments

A. Open Video Systems

84. Section 653(c)(1) of the Act provides that any provision that applies to cable operators under sections 614, 615 and 325, shall apply to open video system operators certified by the Commission. Section 653(c)(2)(A) provides that, in applying these provisions to open video system operators, the Commission "shall, to the extent possible, impose obligations that are no greater or lesser" than the obligations imposed on cable operators. The Commission, in implementing the statutory language, held that there are no public policy reasons to justify treating an open video system operator differently from a cable operator in the same local market for purposes of broadcast signal carriage. Thus, OVS operators generally have the same requirements for the carriage of local television stations as do cable operators except that these entities are under no obligation to place television stations on a basic service tier. We note, however, that an OVS operator must make qualified local commercial and noncommercial educational television stations available to every subscriber. OVS operators are also obligated to abide by section 325 and the Commission's rules implementing retransmission consent. In the NPRM, we asked whether digital carriage rules adopted for the cable industry should apply to OVS Operators, to which Paxson commented in the affirmative. Given the statutory directive to treat OVS operators like cable operators with regard to broadcast signal carriage, we find that OVS operators must carry digital-only television stations pursuant to this Report and Order and § 76.1506 of the Commission's rules.

B. Subscriber Notification

85. Cable operators are required to notify subscribers of any changes in rates, programming services or channel positions. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. We sought comment on how digital broadcast television carriage requirements will affect the notification provisions described above. Pappas believes that cable systems should be required to notify subscribers whenever a DTV signal is added or analog is withdrawn, as specified in the Commission's current rules for system notification to subscribers of channel additions or deletions. ALTV agrees, but adds that an operator should notify subscribers whenever an SDTV programming stream is available on the cable system. We will require a cable operator to notify its subscribers whenever a digital television signal is added to the cable channel line-up or whenever such a signal is moved to another channel location. We will not require an operator to notify subscribers of the actual programming available on each possible SDTV digital stream, if such is carried under retransmission consent, because the mix of programs and services may change frequently. We find it would be unnecessarily burdensome for operators to constantly notify their subscribers, especially in large television markets where there is a potential for dozens of possible programming streams. We also believe that EPGs, or other cable system generated guides, will provide subscribers with relevant and up-to-date information in a more convenient manner than if we were to require operators to provide separate notifications. Nevertheless, we encourage operators to alert subscribers to the possibility that a broadcaster may offer several programming alternatives over the course of the day, where applicable.

C. Cable Antenna Relay Service

86. In the NPRM, we recognized that cable operators are frequently dependent on cable television relay service ("CARS") microwave stations to relay broadcast television signals to and within their cable systems. CARS stations distribute signals to microwave hubs where it may be physically impossible or too expensive to run actual cable wire. In many instances, a cable operator may not be able to string cable through an area because of geographic impediments such as rivers, mountains or superhighways or due to other restrictions, such as the inability or the expense of laying underground cable. Under such circumstances, the cable operator may be able to use CARS band microwave for point-to-point and point-to-multi-point locations to intra-connect the cable system. For example, a cable system may run cable up to a CARS transmitter site, convert all the radio frequency (RF) channels to microwave frequencies for transmission, receive the microwave at a receive location, downconvert back to the RF channels, and complete delivery of the channels via physical wiring to the subscribers. We sought comment on whether the introduction of digital broadcast television affects the CARS system, and, if so, how. We did not receive any comments on CARS and the transition to digital television. We have no reason to expect that digital television service will interfere with CARS, and we decline to revise our Part 78 rules at this time. However, if issues arise as the transition progresses, we will revisit the matter. The Commission is currently considering expanding eligibility for CARS licenses to include all MVPDs. To the extent issues related to the digital transition are raised in that proceeding, they will be addressed in a forthcoming Report and Order.

D. Program Exclusivity Rules

87. The program exclusivity regulations, as implemented in §§ 76.92 and 76.101 of the Commission's rules, protect exclusive distribution rights afforded to network and syndicated programming through private contractual arrangements. Television broadcast station licensees with exclusive programming rights are entitled to protect such programming by exercising blackout rights against local cable systems importing the same programming from distant television broadcast stations. Licensees may assert their rights regardless of whether their signals are actually carried on the cable system in question.

88. Currently, television stations are entitled to exercise network and syndicated blackout rights within certain geographic areas. In Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals, Report and Order, (65 FR 68082, Nov. 14, 2000) the Commission recently applied to satellite carriers' retransmission of nationally distributed superstations the network non-duplication, syndicated exclusivity and sports blackout requirements that currently apply to cable operators.

89. In general, a local television broadcast station may assert its exclusivity rights against cable systems located within 35 miles of the broadcaster's city of license. By exercising its rights, a local television broadcast station that has secured exclusive distribution rights to programming, can prohibit cable systems within 35 miles from importing that same programming from distant television stations. A cable operator, however, importing the same programming from an otherwise distant station, is not required to honor a blackout request from a local broadcaster if the distant station is "significantly viewed" in the cable community. The concept of significant viewing is defined in § 76.5(i) of the

Commission's rules. In addition to the Commission's network and syndicated exclusivity rules, significant viewing is also applicable to the Commission sports blackout rule, and, through incorporation by reference, to the compulsory copyright licensing process.

90. In the NPRM, we sought comment on how the transition to digital television may affect these rules. We specifically asked how digital broadcast multiplexing impacts these rules and whether the cable operator will be able to accommodate such black-out requests on various programming streams. We also asked whether these rules were applicable in the digital age, with or without must carry, and whether it would be possible to repeal these rules and instead rely on the retransmission consent provisions of section 325 of the Act to protect the rights in question.

91. We find that there is an inadequate record in this proceeding upon which to base a change or repeal of the exclusivity rules. In addition, we note that the Act, as amended by the SHVIA, required the Commission to implement program exclusivity rules for satellite carriers that import certain defined superstations. Therefore, we agree with numerous commenters that the topic of changing the rules be addressed at a future date, where a more complete and focused record can be developed. Until that time occurs, we will maintain our existing exclusivity framework for digital television signals. In addition, we shall make the appropriate change to § 76.5 as suggested by MSTV. With respect to how SDTV multiplexing impacts the exclusivity rules and whether the cable operator will be able to accommodate blackout requests on various programming streams, we believe that it is not necessary to resolve this issue here.

92. As we stated in the SHVIA Non-Duplication, Syndicated Exclusivity and Sports Blackout Order, only those exclusive contracts that provide for exclusivity vis a vis signals delivered by satellite carriers or are broad enough to encompass the delivery of duplicating programming by any delivery means entitle a station to assert exclusivity rights under the rules. Likewise, in the digital context, only those exclusive contracts that specifically cover digital signals entitle a station to assert exclusivity rights. We note also that, in the SHVIA Non-Duplication, Syndicated Exclusivity and Sports Blackout Order, we stated that we were disinclined, in the early stage of the DTV transition, to allow a broadcaster to use an exclusive contract for digital programming only to prevent a cable system or satellite carrier from providing that programming in analog form to its subscribers. Therefore, neither satellite carriers nor cable operators are permitted to carry the digital version of a program when the contract expressly provides exclusivity for both, any or all formats.

93. *Significantly Viewed.* In the NPRM, we stated that the significant viewing standard supplements other "local" station definitions by permitting stations that would otherwise be considered "distant," for program exclusivity purposes, to be considered local based on viewing surveys directly demonstrating that over-the-air viewers have access to the signals in question. Because digital broadcast television stations will not, in the early stages of their deployment, have a significant over-the-air audience, we sought comment on methods to address the kinds of issues that the significant viewing standard addresses in the analog environment. We asked, for example, whether a new method should be developed that measures viewing in places that are equipped with digital receivers. In the alternative, we asked whether the "significant viewing" status of analog stations should be transferred to their digital counterparts. With respect to these rules, we note that in adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to insure that a station's digital over-the-air coverage area would replicate as closely as possible its current over-the-air analog coverage area. In view of this, and consistent with the comments received on this subject, we believe that the public interest is best served by according the digital signal of a television broadcast station the same significantly viewed status accorded the analog signal. We note, however, that DTV-only television stations must petition the Commission for significantly viewed status under the same requirements for analog stations in § 76.54 of the Commission's rules.

E. Tiers and Rates

94. *Tier Placement.* Sections 614 and 615 are silent on the question of where signals subject to mandatory carriage must be placed, but section 623(b)(7), one of the Act's rate regulation provisions, requires that "all signals carried in fulfillment of the requirements of section 614 and 615" must be provided to subscribers on a "separately available basic service tier to which subscription is required for access to any other tier of service." In the NPRM, we sought comment on whether a cable operator must place a broadcaster's digital signal on the same basic tier where the analog signals are found or whether a separate digital basic service tier could be established that would be available only to subscribers capable of viewing digital broadcast signals. Adelphia argues that cable operators should be allowed to create a separate digital tier that could be purchased as an accompaniment to the analog basic tier for an extra fee. ALTV, on the other hand, submits that the Act applies to local television stations' DTV signals just as it applies to analog signals; that is, DTV signals must be placed on the cable system's basic service tier and made available to every subscriber.

95. In the context of analog must carry, it has been the Commission's view that the Act contemplates there be one basic service tier. We believe that in the context of the new digital carriage requirements, it is consistent with the statutory language to require that a broadcaster's digital signal must be available on a basic tier such that all broadcast signals are available to all cable subscribers at the lowest priced tier of service, as Congress envisioned. The basic service tier, including any broadcast signals carried, will continue to be under the jurisdiction of the local franchising authority, and as such, will be rate regulated if the local franchising authority has been certified under section 623 of the Act. We note, however, that if a cable system faces effective competition under one of the four statutory tests, and is deregulated pursuant to a Commission order, the cable operator is free to place a broadcaster's digital signal on upper tiers of service or on a separate digital service tier. This finding is based upon the belief that section 623(b)(7) is one of those rate regulation requirements that sunsets once competition is present in a given franchise area. We believe that the decision in *Time Warner* v. *FCC* supports this interpretation.

96. *Rates.* As noted above, digital broadcast signal carriage also has potential consequences for the cable television rate regulation process. In communities where there has not been a finding of effective competition or where there is local rate enforcement, rates for the basic service tier ("BST") are subject to regulation by local franchise authorities. Regulated cable systems have established initial regulated rates using either the "benchmark" or "cost of service" methodologies pursuant to the Commission's rules. Once initial rates are established, cable operators are permitted to adjust rates for changes in external costs and inflation. Regulated

cable operators seeking to adjust their BST rates to reflect these changes must justify rate increases using the applicable forms. There are also cost pass-through mechanisms for defined categories of "external" costs, including franchise fees and certain local franchise costs, as well as fees paid for programming, retransmission consent, and copyright. Compliance costs associated with must carry are not covered by the definition of external costs.

97. The Commission is charged with adopting a rate regulation scheme appropriate for the BST. The present rate rules take into account, inter alia, "the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier * * * and changes in such costs." In the NPRM, we sought comment on what, if any, changes in the Commission's rate rules may be necessary or desirable. We also asked parties to refresh the record on the specific technical modifications needed to enable cable systems to deliver digital broadcast television to subscribers. Relatively few parties addressed the rate regulation issues we raised or provided data on the anticipated costs of providing digital broadcast programming to subscribers. Therefore, it is difficult to specify how costs attributable to providing digital programming, if any, might be reflected in cable rates. Armstrong, a mid-size cable operator, states that the costs for digital conversion will include upgrading tower capacity, building or leasing additional tower space, and adding new digital antennas. SCBA estimates the cost for digital broadcast signal carriage will be at least $2,000 per digital channel at the headend, which would amount to $10,000 or more for the average television market with five local stations. In contrast, ALTV contends there is only a marginal cost to add a few additional DTV signals. As to the issue of whether the carriage costs could be passed along to subscribers, ALTV cautions that the Commission should not allow the cable industry to exploit fears of rate increases due to digital carriage. AAPTS asserts that even without must carry requirements, cable operators will be buying equipment to carry digital signals, so there is no basis to impose these costs on smaller broadcasters, especially noncommercial educational television stations.

98. With regard to the rate issues, we first note that there are costs for carrying digital television signals at different stages of the cable system transmission process. First, antennas and/or other equipment necessary to receive the broadcast signal at the cable headend are required. In the must carry context, these costs are the broadcasters' responsibility under the Act. In the retransmission consent context, the broadcaster and the cable operator may agree to any cost arrangement that is mutually agreeable. Then there are costs for processing the digital television signal in the cable headend and at other points in the cable system up to the point in which the cable is installed inside the cable subscribers' premises. The treatment of these kinds of costs is considered below. Finally, there are costs associated with providing subscribers with customer premises equipment, such as set top boxes. As explained below, we find no need to change the rules relating to such equipment. We also note that we are considering adopting a per channel adjustment methodology for those operators that add digital broadcast signals to their channel line-ups. This topic is discussed in the FNPRM published elsewhere in this **Federal Register.**

99. In general, rate adjustments for channels added to the BST are limited to the recovery of external costs, including a 7.5% mark-up for new programming costs. "External costs" have been specifically limited to taxes, franchise fees, franchise compliance costs (including PEG), retransmission and copyright fees, other programming costs, and Commission regulatory fees. There are also rules and forms in place that address situations where cable systems are upgrading physical plant to provide digital programming to cable subscribers. Section 76.922(j)(1) of the Commission's rules states: "Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers." FCC Form 1235 is an abbreviated cost of service filing used for network upgrades pursuant to section 76.922(j). This form permits operators to adjust rates by reporting the cost of a system upgrade, which is added to a system's tier rate to generate a maximum permitted rate. The benchmark rates and price cap adjustments for inflation will generally allow systems to recover normal capital costs, but cable operators may use Form 1235 to recover costs for "significant" upgrades, such as expansion of bandwidth, conversion to fiber optics, or system rebuilds, without doing a cost of service analysis for the whole system. The original goals of the abbreviated cost-of-service showing for network upgrades, to "promote the availability of diverse cable services and facilities [and] encourage economically justified upgrades," are as relevant now as they were in 1994.

100. For an operator to justify rate adjustments using the FCC Form 1235, the Commission currently requires: that the upgrade be "significant" and require added capital investment, such as expansion of bandwidth capacity, conversion to fiber optics or system rebuilds; that the upgrade actually benefit subscribers through improvements in the regulated services subject to the rate increase; that the upgrade rate increase not be assessed until the upgrade is complete and providing benefits to subscribers of regulated services; that the operator demonstrate its net increase in costs, taking into account current depreciation expense, projected changes in maintenance and other expenses, and changes in other revenues; and that the operator allocate its costs to ensure that only costs allocable to subscribers of regulated services are imposed upon them. Based on the lack of comment about the need for rate adjustments, we expect that many cable systems will be able to accommodate digital television signals through the normal improvements and expansions of service that are reflected in the rate adjustments allowed by FCC Forms 1210 and 1240. However, some systems are also undertaking significant overall system upgrades, a part of which will include a digital buildout, and for which a Form 1235 upgrade rate adjustment would be appropriate.

101. There may also be systems, requiring significant technical improvements to carry digital signals, that do not necessarily qualify as an "upgrade" under FCC Form 1235. For these kinds of systems as well, we believe it will be appropriate for operators to use FCC Form 1235 for a rate adjustment. Allowing operators to pursue this option may hasten the digital transition as it will provide an incentive to add headend and other system equipment to accommodate the carriage of digital television signals.

102. The current instructions for Form 1235 require the cable operator to qualify for an upgrade rate adjustment by certifying that the upgrade meets the Minimum Technical Specifications or describing how the upgrade will be significant and will benefit subscribers. The instructions for the second option include, where applicable, the number of channels added to a tier and the level of improvement in picture quality. Thus, we find that Form 1235 can be an appropriate vehicle for allowing a cable

operator to adjust rates commensurate with their upgrade costs to the extent such upgrades are necessary to provide digital broadcast programming to its subscribers. We note, however, that an operator may file a Form 1235, even if it had done so before, if it can demonstrate new costs are not being recovered through the surcharge calculation on a previous Form 1235. Section 76.922(j) is amended to clarify that it is appropriate to use the network upgrade form in these circumstances, (cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers, including providing television broadcast programming in a digital format).

103. While these upgrades will make digital broadcast programming available to all basic cable television subscribers, we believe the rate adjustments should only apply to those that purchase digital programming. We note that rate increases based on upgrades shall not be assessed on these subscribers until the upgrade is complete and the subscriber is receiving digital television signals. If the digital broadcast programming were offered on the BST, the basic tier rate would consist of the maximum permitted rate for the basic tier plus the FCC Form 1235 surcharge which represents the portion of the digital upgrade cost allocated to the basic tier. An operator could continue to allocate all of its digital upgrade costs to the CPST.

104. Finally, we note that regulated cable systems may charge subscribers for customer premises equipment, such as the set-top box, that may likely be necessary for digital subscribers. In communities where there has not been a finding of effective competition, these equipment rates are subject to regulation. Our rules permit cable operators to charge subscribers for set top boxes and other equipment provided the charges do not exceed actual costs. In addition, the Act provides that cable operators can aggregate their equipment costs on a franchise, system, regional, or company level and can aggregate the costs into broad categories, regardless of the varying levels of functionality of the equipment within these broad categories. As we find that the regulatory framework in place for cable subscriber premises equipment is adequate to account for the costs of adding digital television signals, there is no need to make rule adjustments here.

VII. Procedural Matters

A. Paperwork Reduction Act of 1995 Analysis

105. The requirements contained in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the new or modified information collection requirements contained in this Report and Order as required by the 1995 Act. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Written comments by the public on the new or modified information collections are due on or before May 25, 2001. Any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th St, SW., Room 1–0804, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

OMB Control Number: 3060–0844.
Title: Digital Broadcast Carriage.
From Number: n/a.
Type of Review: Revision of a currently approved collection.
Respondents: 99,278.
Estimated Time Per Response: .5–1 hours.
Total Annual Burden: 2,355.
Total Annual Costs: $2,355.12.
Needs and Uses: The information collection requirements under this control number are used to seek comment on possible changes to mandatory carriage rules, and explore the impact that cable carriage of digital television signals may have on other Commission rules.

Final Regulatory Flexibility Act Analysis

106. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities by the policies and rules found in this Report and Order. The Report and Order and FRFA (or summaries thereof) will be published in the **Federal Register**.

107. Need for, and Objectives of, the Final Rule Changes. The objective of the Report and Order is to make certain technical and substantive rule changes that bear on the issue of carriage of digital broadcast signals.

108. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. The Small Cable Business Association ("SCBA," now known as the American Cable Association, ACA) filed comments as described in the Report and Order, supra. SCBA stated that unregulated analog retransmission consent demands, and tying in particular, threatens small cable operators' financial viability. To remedy the situation, the SCBA urged the Commission to prohibit broadcasters from tying analog carriage to digital carriage.

109. Description and Estimate of the Number of Small Entities To Which the Final Rules Will Apply. The FRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the final rules. The FRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we adopt in this Report & Order will affect cable operators and OVS operators.

110. Small MVPDs. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

111. Cable Systems. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenue of $100 million or less. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

112. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

113. Open Video Systems. The Commission has certified 31 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

114. Program Producers and Distributors. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (SIC 7812). Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and SIC 7822, and $5 million or less in annual receipts for SIC 7922. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (SIC 7812), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (SIC 7822), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (SIC 7922), and 5627 of these firms had $4.999 million or less in annual receipts.

115. Each of these SIC categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

116. Television Stations. The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

117. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

118. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

119. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 30, 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include

or aggregate revenues from non-television affiliated companies.

120. Small Manufacturers. The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.

121. Electronic Equipment Manufacturers. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will use the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

122. Electronic Household/Consumer Equipment. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will use the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

123. Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will use the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities. The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

124. Description of Projected Reporting, Record Keeping and other Compliance Requirements. There are compliance requirements for cable operators and OVS operators as a result of the Report and Order. An attempt has been made to streamline compliance requirements. For example, we have declined to adopt specific channel positioning requirements for digital television signals.

125. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities. The Small Cable Business Association ("SCBA," now known as the American Cable Association, ACA) filed comments as described in the Report and Order, supra. SCBA stated that unregulated analog retransmission consent demands, and tying in particular, threatens small cable operators' financial viability. To remedy the situation, the SCBA urged the Commission to prohibit broadcasters from tying analog carriage to digital carriage. We have deferred imposing a dual analog and digital broadcast signal carriage requirement on cable operators, including small cable operators, as well as OVS operators, at this time. However, we have adopted several retransmission consent policies and digital-only carriage requirements applicable to all cable operators and OVS operators. Due to lack of sufficient evidence on the record, we have decided not to prohibit retransmission consent tying arrangements, as requested by the SCBA. However, we are seeking further comment on this issue in the FNPRM. In the aggregate, we believe that there will be minimal impact on small entities as a result of the Report and Order. However, we are mindful of the concerns raised by small entities throughout this proceeding and will carefully scrutinize our policy determinations as we go forward.

126. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

127. Report to Congress. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

F. Ordering Clauses

128. Accordingly, *it is ordered* that, pursuant authority found in sections 4(i) 4(j), 303(r), 325, 336, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, 336, 534, and 535, the Commission's rules *are hereby amended*.

129. *It is further ordered* that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Report and Order including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

130. *It is further ordered* that upon OMB approval of the information collection requirements contained in these revisions the Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

List of Subjects in 47 CFR Part 76

Cable television, Carriage, Digital television, Mandatory carriage, Television broadcast stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 76 of Title 47 of the Code of Federal Regulations as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5(b) is revised to read as follows:

§ 76.5 Definitions.

* * * * *

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 or § 73.622 of this chapter, and any television broadcast station licensed by a foreign government: *Provided, however,* That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier. Further provided that a television broadcast station operating on channels regularly assigned to its community by both §§ 73.606 and 73.622 of this chapter may assert a claim for carriage pursuant to subpart D of this part only for a channel assigned pursuant to § 73.606.

* * * * *

3. Section 76.56(e) is revised to read as follows:

§ 76.56 Signal carriage obligations.

* * * * *

(e) Carriage of additional broadcast television signals on such system shall be at the discretion of the cable operator, subject to the retransmission consent rules, § 76.64. A cable system may also carry any ancillary or other transmission contained in the broadcast television signal.

* * * * *

4. Section 76.57 is amended by redesignating paragraphs (c), (d), (e) as paragraphs (d), (e), (f), adding a new paragraph (c), revising the newly redesignated paragraph (e), and the note that follows newly redesignated paragraph (e) is designated as "Note to § 76.57" to read as follows:

§ 76.57 Channel positioning.

* * * * *

(c) With respect to digital signals of a television station carried in fulfillment of the must-carry obligations, a cable operator shall carry the information necessary to identify and tune to the broadcast television signal.

* * * * *

(e) At the time a local commercial station elects must-carry status pursuant to § 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a), (b), and (d) of this section. A qualified NCE stations shall notify the cable system of its choice of channel position when it requests carriage. Channel positioning requests from local commercial stations shall be fulfilled by the cable operator no later than October 6, 1993.

* * * * *

5. Section 76.62 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 76.62 Manner of carriage.

* * * * *

(b) Each such television broadcast signal carried shall be carried without material degradation, and, for analog signals, in compliance with technical standards set forth in subpart K of this part.

* * * * *

(g) With respect to carriage of digital signals, operators are not required to carry ancillary or supplementary transmissions or non-program related video material.

6. Section 76.64 is amended by revising paragraphs (f) introductory text, (f)(4), and (k) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(f) Commercial television stations are required to make elections between retransmission consent and must-carry status according to the following schedule:

* * * * *

(4) New television stations and stations that return their analog spectrum allocation and broadcast in digital only shall make their initial election any time between 60 days prior to commencing broadcast and 30 days after commencing broadcast or commencing broadcasting in digital only; such initial election shall take effect 90 days after it is made.

* * * * *

(k) Retransmission consent agreements between a broadcast station and a multichannel video programming distributor shall be in writing and shall specify the extent of the consent being granted, whether for the entire signal or any portion of the signal. This rule applies for either the analog or the digital signal of a television station.

* * * * *

7. Section 76.922 is amended by adding paragraph (f)(1)(vii) and revising paragraph (j)(1) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming service tiers.

* * * * *

(f) * * *

(vii) Headend equipment costs necessary for the carriage of digital broadcast signals.

* * * * *

(j) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers, including providing television broadcast programming in a digital format.

* * * * *

8. Section 76.1603(c) is revised to read as follows:

§ 76.1603 Customer service—rate and service changes.

* * * * *

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

* * * * *

[FR Doc. 01–7323 Filed 3–23–01; 8:45 am]

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Federal Register

Monday,
March 26, 2001

Part III

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 2001 Community Food and Nutrition Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2001–5]

Request for Applications Under the Office of Community Services' Fiscal Year 2001 Community Food and Nutrition Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program (CFNP).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681 of the Community Services Block Grant Act, as amended. This Program Announcement contains forms and instructions for submitting an application. The awarding of grants under this Program Announcement is subject to the availability of funds for support of these activities.

DATES: The closing date for submission of applications is May 25, 2001. Mailed applications postmarked after the closing date will be classified as late.

FOR FURTHER INFORMATION, CONTACT: Administration for Children and Families, Office of Community Services, Division of Community Discretionary Programs, 370 L'Enfant Promenade S.W., Washington DC 20447. Contact: Catherine Rivers, Phone: (202) 401–5252, Fax: (202) 401–4687.

This Program Announcement is accessible on the OCS web site for reading or downloading at: *www.acf.dhhs.gov/programs/ocs/kits1.htm*

The Catalog of Federal Domestic Assistance number for this program is 93.571. The title is Community Food and Nutrition Program.

Application Submission

Mailing Address: CFNP applications should be mailed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW, Washington, D.C. 20447; Attention: Application for Community Food and Nutrition Program.

Number of Copies Required: One signed original application and four copies should be submitted at the time of initial submission. (OMB–0970–0062, expiration date 10/31/2001).

Submission Instructions: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review.

Applications mailed must bear a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicants' couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: Application for Community Food and Nutrition Program. (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Once submitted, applications are considered final and no additional materials will be accepted.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Table of Contents

Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, Community Food and Nutrition Programs, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for community-based, local and statewide programs (1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

The Act also requires that 20 percent of the appropriated funds in excess of $6 million be awarded on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Native Americans and migrant or seasonal farmworkers.

2. Definitions of Terms

For purposes of this Program Announcement, the following definitions apply:

Budget period: The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

Eligible entity: State and local governments, as well as Indian tribes, and public and private nonprofit agencies/organizations including Community Action Agencies. (See Part B–1).

Empowerment Zones and Enterprise Communities: Those Communities designated as such by the Secretary of Agriculture or the Secretary of Housing and Urban Development.

Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.

Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Program income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project period: The total time for which a project is approved for support, including any approved extensions.

Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Self-sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

3. Purpose of Community Food and Nutrition Program

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of individuals through improved preventive health care and promotion of personal responsibility. The DHHS encourages the approach to health promotion and nutritional responsibility with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The DHHS is specifically interested in improving the health and nutrition status of low-income persons through improved access to healthy nutritious foods or by other means. The DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

4. Project Requirements

Projects funded under this program should:

(a) Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(b) Provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally-assisted programs;

(c) Carry out targeted communications/social marketing to improve dietary behavior and increase program participation among eligible low-income populations. Populations to be targeted can include displaced workers, elderly people, children, and the working poor.

(d) Consult with and/or inform local offices that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in the planning of grant applications.

(e) Focus on one or more legislatively-mandated program activities: (1) Coordination of private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating such programs in unserved or underserved areas; and (3) development of innovative approaches at the state and local level to meet the nutrition needs of low-income individuals.

The OCS views this program as a capacity building program, rather than as a service delivery program.

Part B—Application Requirements

1. Eligible Applicants

Eligible applicants are State and local governments, as well as Indian tribes, and public and private nonprofit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. The OCS encourages Historically Black Colleges and Universities and minority institutions to submit

applications. Eligible applicants with programs benefiting Native Americans and migrant or seasonal farmworkers are also encouraged to submit applications.

Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501 (c)(3) of the IRS tax code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Availability of Funds and Grant Amounts

a. Fiscal Year 2001 Funding

The funds available for grant awards under the CFNP in Fiscal Year 2001 are:
General Projects: $2,526,000
Nationwide Programs: $63,000

All grant awards are subject to the availability of appropriated funds.

b. Grant Amounts

No individual grant application will be considered for an amount in excess of $50,000 for applications submitted under General Projects. No eligible organization may receive more than $63,000 for a nationwide program.

c. Mobilization of Resources

The OCS would like to mobilize as many resources as possible to enhance projects funded under this program. The OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

3. Project Periods and Budget Periods

For most projects, OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. Indirect costs consistent with approved indirect cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Parts C and D of this Program Announcement. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittal

There is no limit to the number of applications that can be submitted by an eligible applicant as long as each application is for a different project. However, no applicant can receive more than one grant.

8. Sub-Contracting or Delegating Projects

The OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Program Priority Areas

1. General Projects—FN

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this Announcement must produce permanent and measurable results that fulfill the purposes of this program as described above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). Failure to comply with the income guidelines may result in the application being ineligible for consideration for funding.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended. If there is any question as to whether the property is listed in or is eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to DHHS.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Applications that propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. The OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. In cases where material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part A–3 of this Announcement.

The OCS is also interested in projects that address the needs of homeless families and welcomes applications that seek to develop innovative approaches

to promote health and nutritional awareness among low-income populations.

2. Nationwide Programs—NP

Projects funded must be nationwide in scope and must meet the requirements of Part C–1 (General Projects). No eligible organization may receive more than $63,000 for a nationwide program.

Part D—Review Criteria

Applications that pass the initial screening and pre-rating review (see Part F, section 4) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

When writing their Project Narrative, applicants should respond to the review criteria using the same sequential order.

Note: The following review criteria reiterate the information requirements contained in Part A of this Announcement.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

Criterion I: Analysis of Needs/Priorities (Maximum: 10 Points)

(1) Target area and population to be served are adequately described. (0–4 Points)

In addressing the above criterion, the applicant should include a description of the target area and population to be served including specific details on any minority population(s) to be served.

(2) Nature and extent of problem(s) and/or need(s) to be addressed are adequately described and documented. (0–6 Points)

In addressing the above criterion, the applicant should include a discussion of the nature and extent of the problem(s) and/or need(s), including specific information on minority populations(s).

Criterion II: Adequacy of Work Program (Maximum: 25 Points)

(1) Realistic quarterly time targets are set forth by which the various work tasks will be completed. (0–10 Points)

(2) Activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs. (0–15 Points)

In addressing the above criterion, the applicant should address the basic criteria and other mandated activities found in Part A–4 and should include:

a. Project priorities and rationale for selecting them which relate to the specific nutritional problem(s) and/or need(s) of the target population which were identified under Criterion I;

b. Goals and objectives that speak to the(se) problem(s) and/or need(s); and

c. Project activities that, if successfully carried out, can be reasonably expected to result in the achievement of these goals and objectives.

Criterion III: Significant and Beneficial Impact (Maximum: 30 Points)

(1) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–15 Points)

(2) Project incorporates promotional health and social services activities for low-income people, along with nutritional services. (0–5 Points)

(3) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified. (0–5 Points)

(4) Project addresses problem(s) that can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support. (0–5 Points)

In addressing the above criterion, the applicant must include quantitative data for items (1), (2), and (3), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in Part A–1 and the problems and/or needs described under Criterion I.

Criterion IV: Coordination/Services Integration (Maximum: 15 Points)

(1) Project shows evidence of coordinated community-based planning in its development, including strategies in the work program to carry on activities in collaboration with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example, (1) unite funding streams at the local level to increase program outreach and effectiveness, (2) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients, or (3) bring project participants into direct interaction with holistic family development resources in the community where needed. (0–10 Points)

(2) Community Empowerment Consideration—Special consideration will be given to applicants who are located in areas which are characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. Applicants should document that they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner. (0–5 Points)

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

Criterion V: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 Points)

(1) *Organizational experience in program area (0–5 Points).*

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations that propose providing training and technical assistance have detailed competence in the program area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(2) Management History (0–5 Points).

Applicants must demonstrate their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also document that they have consistently complied with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) Staffing Skills, Resources and Responsibilities (0–5 Points).

The application adequately describes the experience and skills of the proposed project director showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In addressing the above criterion, the applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

Criterion VI: Adequacy of Budget (Maximum: 5 Points)

The budget is adequate and administrative costs are appropriate in relation to the services proposed. (0–5 Points)

Part E—Instructions for Completing Application Package

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement. It is recommended that you reproduce single-sided copies of the SF–424, SF–424A and SF–424B, and type your application on the copies. Please prepare your application in accordance with the instructions provided with the forms, as well as with the OCS specific instructions set forth below:

1. SF–424—Application for Federal Assistance (Attachment B–1)

Item 1. Type of Submission—For the purposes of this Announcement, all projects are considered Applications; there are no Pre-applications.

Item 2. Date Submitted and Applicant Identifier—Enter the date the application is submitted to ACF and the applicant's internal control number, if applicable.

Item 3. Date Received by State—N/A.

Item 4. Date Received by Federal Agency—Leave blank.

Items 5 & 6. Applicant Information & Employer Identification Number—-The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous DHHS grantee, enter the Central Registry System/Employee Identification Number (CRS/EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the block entitled Federal Identifier located at the top right hand corner of the form.

Item 7. Type of Applicant—If the applicant is a nonprofit corporation, enter the letter "N" in the box and specify nonprofit corporation in the space marked "Other". Proof of nonprofit status, such as IRS certification, Articles of Incorporation, or By-laws must be included as an appendix to the project narrative.

Item 8. Type of Application—Check "New"

Item 9. Name of Federal Agency—Enter "DHHS–ACF/OCS"

Item 10. The Catalog of Federal Domestic Assistance (CFDA) Number—The CFDA number for the OCS program covered under this Announcement is 93.571. The title is "Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program".

Item 11. Descriptive Title of Project—In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

FN—General Projects

NP—Grants to organizations with nationwide programs

Item 12. Areas Affected by Project—List only the largest unit or units affected, such as State, county or city.

Item 13. Proposed Project Dates—Show 12-month project period. (See Part B–3) In addition, the project period start date must be on or before September 30, 2001.

Item 14. Congressional District of Applicant/Project—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. Estimated Funding—15a. Show the total amount requested for the entire project period; 15b. thru 15e. For each line item, show both cash and third party in-kind contributions for the total project period; 15f. Show the estimated amount of program income for the total project period; 15g. Enter the sum of all the lines.

2. SF–424A—Budget Information—Non-Construction Programs (Attachment B–2)

See the instructions accompanying the Attachment as well as the instructions set forth below.

In completing these sections, the Federal funds budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and non-Federal will include mobilized funds from all other sources—applicants, State, and other Federal funds other than those requested from the Community Food and Nutrition Program should be included in non-Federal entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal mobilized funds.

Section A—Budget Summary

Lines 1–4

Column (a) Line 1—Enter OCS CFNP.
Column (b) Line 1—Enter 93.571.
Columns (c) and (d)—Not Applicable.
Columns (e), (f) and (g)—Line 1—Enter appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the Code of Federal Regulations (CFR), Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-Federal share. (Note: Local transportation and consultant travel costs are entered on Line 6h.)

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. [Note: If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property $500 or more", the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.]

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies (office, classroom, medical, etc.). Include equipment costing less than $5,000 per item.

Line 6f

Contractual—Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual); fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use training costs including tuition and stipends; training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot also be budgeted or charged as direct costs to the grant. Indirect costs consistent with approved indirect cost rate agreements are allowable. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (see SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.

Column (b)—Enter the amount of cash or donations to be made by the applicant.

Column (c)—Enter the State contribution.

Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13

Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12-month budget period.

Line 14

Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B—Assurances Non-Construction Programs (Attachment B–3)

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major sections:

a. Analysis of Need
b. Project Design (Adequacy of Work Program)
c. Significant and Beneficial Impact
d. Coordination/Services Integration
e. Organizational Experience in Program Area and Staff Responsibilities
f. Adequacy of Budget

The project narrative must address the specific purposes mentioned in Part A of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in Part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part E and the Attachments to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications.

A copy of this Program Announcement is available on the Internet through the OCS web site at the following web address: *www.acf.dhhs.gov/programs/ocs/kits1.htm.*

This Program Announcement also may be obtained by telephoning the office listed in the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this Announcement.

The information requested under this Program Announcement is covered under the following OMB information collection clearances: SF–424 (No. 0348–0043), SF–424A (No. 0348–0044), SF–424B (No. 0348–0040), and other requirements for OCS applications (No. 0970–0062, expiration date October 31, 2001).

2. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-eight jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, OCSE Office of Grants Management, 370 L'Enfant Promenade, S.W., 4th floor East, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this Announcement.

3. Application Consideration

Applications that meet the screening requirements in Section 4 below will be reviewed competitively. Such

applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicant; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. The OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

4. Criteria for Screening Applications

a. Initial Screening—All applications that meet the application deadline will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the below listed requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed and signed Standard Form SF–424.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-Rating Review—Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the section below and the specific requirements contained in Part A of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) Eligibility—Applicant meets the eligibility requirements found in Part B.

(2) Number of Projects—The application contains only one project.

(3) Target Populations—The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) Grant Amount—The amount of funds requested does not exceed $50,000 (except for nationwide programs).

(5) Program Focus—The application addresses the purposes described in Part A of this Announcement.

c. Evaluation Criteria—Applications that pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part G—Contents of Application Package and Receipt Process

1. Contents of Application

Each application submission must include a signed original and four additional copies of the application. Each copy of the application MUST contain, in the order listed, each of the following:

a. Table of Contents with page numbers noted for each major section and subsection of the application, including the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. A Project Abstract which is a succinct description of the project in 200 words or less. The abstract should be on a separate page and should show (in the upper left-hand corner) the applicant's legal name and address, and the name and telephone number of the contact person for project information.

c. The SF–424 (Application for Federal Assistance). (Attachment B–1) should be completed in accordance with instructions provided with the form, as well as OCS specific instructions set forth in Part E of this Announcement. The SF–424 must contain an original signature of the certifying representative of the applicant organization. Applicants must also be aware that the applicant's legal name (Item 5) MUST match the Employer Identification Number (Item 6).

d. SF–424A (Budget Information—Non-Construction Programs) (Attachment B–2) must be completed.

e. SF–424B (Assurances—Non-Construction Programs) (Attachment B–3) must be filed by applicants requesting financial assistance for a non-construction project. Applicants must sign and return the SF–424B with their applications.

f. Certification Regarding Lobbying (Attachment C–1). Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

g. Disclosure of Lobbying Activities (SF–LLL). Applicants must fill-in, sign and date form found at Attachment C–2. (This form is required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.)

h. Project Narrative (See Part E, section 4)

i. Certification Regarding Drug-Free Workplace Requirements (Attachment D). Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

j. Certification Regarding Debarment, Suspension, Etc. (Attachment E). Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

k. Certification Regarding Environmental Tobacco Smoke (Attachment F). Applicants must make the appropriate certification of their compliance with the Pro-Children Act of 1944. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

The total number of pages for the narrative portion of the application package must not exceed 30 pages in its entirety. Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½ x 11-inch paper only. They must not include colored,

oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc. Such materials will be discarded if included.

Applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

2. Acknowledgement of Receipt

An acknowledgement will be mailed to all applicants with an identification number which will be noted on the acknowledgement. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the application deadline, applicants must notify ACF by telephone (202) 260–6662. Applicant should also submit a mailing label for the acknowledgement. (Note: To facilitate receipt of this acknowledgement from ACF, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these items are available to applicant.)

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) that will be applicable to grants, grantees will be subject to the provisions of 45 CFR Parts 74 (non-governmental) and 92 (governmental) along with Circulars 122 (non-governmental) and 87 (governmental).

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds, and (3) to file quarterly updates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachments C–1 and C–2 for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations that apply to all applicants/grantees under the FY 2001 Community Food and Nutrition Program.

Dated: March 20, 2001.

Robert Mott,

Acting Director, Office of Community Services.

Community Food and Nutrition Program

List of Attachments

Attachment A—2000 Poverty Guidelines For The 48 Contiguous States And The District Of Columbia, Alaska, and Hawaii
Attachment B–1—Standard Form 424, Application for Federal Assistance
Attachment B–2—Standard Form 424A, Budget Information—Non-Construction Programs
Attachment B–3—Standard Form 424B, Assurances—Non-Construction Programs
Attachment C–1—Certification Regarding Lobbying
Attachment C–2—Standard Form LLL, Disclosure of Lobbying Activities
Attachment D—Certification Regarding Drug-Free Workplace Requirements
Attachment E—Certification Regarding Debarment, Suspension, And Other Responsibility Matters (Primary and Lower Tier Covered Transactions)
Attachment F—Certification Regarding Environmental Tobacco Smoke
Attachment G—State Single Point of Contact Listing Maintained By OMB
Attachment H—DHHS Regulations Applying To All Applicants/Grantees Under The Community Food and Nutrition Program
Attachment I—Applicant's Checklist

Attachment A

2001 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$8,590
2	11,610
3	14,630
4	17,650
5	20,670
6	23,690
7	26,710
8	29,730

For family units with more than 8 members, add $3,020 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$10,730
2	14,510
3	18,290
4	22,070
5	25,850
6	29,630
7	33,410
8	37,190

For family units with more than 8 members, add $3,780 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guidelines
1	$9,890
2	13,360
3	16,830
4	20,300
5	23,770
6	27,240

2001 POVERTY GUIDELINES FOR HAWAII—Continued

Size of family unit	Poverty guidelines
7	30,710
8	34,180

For family units with more than 8 members, add $3,470 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

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Attachment B-1, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special Distnct
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tnbe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropnate letter(s) in box(es) ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authonzed Representative	b. Title	c. Telephone Number
d. Signature of Authonzed Representative		e. Date Signed

Previous Edition Usable
Authonzed for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescnbed by OMB Circular A-102

BILLING CODE 4184-01-C

INSTRUCTIONS FOR THE SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item/Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.*, construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (*e.g.*, State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any district(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of inkind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

Attachment B-2, Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

BILLING CODE 4184-01-C

INSTRUCTIONS FOR THE SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5

Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal by object class categories.

Line 6a–i

Show the totals of Lines 6a to 6h in each column.

Line 6j

Show the amount of indirect cost.

Line 6k

Enter the total of amounts on Lines 6i and 6j. For all applications or new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7

Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11

Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12

Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13

Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14

Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19

Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20

Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21

Use this space to explain amounts for individual direct object class cost categories

that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22

Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23

Provide any other explanations or comments deemed necessary.

Attachment B–3

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project describe in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statues relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1996, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment C–1

Developing ACF Program Announcements

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been pair or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL. "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL. "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

Attachment C-2, Page 1

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 32 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payments to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Includes at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g. "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city. State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individuals(s) performing services, and include full address if different from 10 (a). Enter Last Name, first Name, and Middle Initial (M).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment D

Developing ACF Program Announcements

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988; 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight. Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate 1 applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, state employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant or the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances ACt (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15):

Conviction means a finding of guilt (including a pleas of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces):

Certification Regarding Drug-Free Workplace Requirements

Alternate 1. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful

manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Attachment E

Developing ACF Program Announcements

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. the prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of any administrative compliance order on the responsibility entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any standards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Arkansas

Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
Fax: (501) 682–5206
tlcopeland@dfa.state.ar.us

California

Grants Coordination
State Clearinghouse
Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, California 95812–3044

Telephone: (916) 445–0613
Fax: (916) 323–3018
state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins
Executive Department
Office of the Budget
540 S. Dupont Highway, 3rd Floor
Dover, Delaware 19901
Telephone: (302) 739–3323
Fax: (302) 739–5661
chopkins@state.de.us

District of Columbia

Ron Seldon
Office of Grants Management and Development
717 14th Street, NW, Suite 1200
Washington, DC 20005
Telephone: (202) 727–1705
Fax: (202) 727–1617
ogmd-ogmd@dcgov.org

Florida

Cherie L. Trainor
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
(850) 414–5495 (direct)
Fax: (850) 414–0479
cherie.trainor@dca.state.fl.us

Geargia

Georgia State Clearinghouse
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 656–3855
Fax: (404) 656–7901
gach@mail.opb.state.ga.us

Illinais

Virginia Bova
Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
Fax: (312) 814–8485
vbova@commerce.state.il.us

Iawa

Steven R. McCann
Division of Community and Rural Development
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
Fax: (515) 242–4809
steve.mccann@ided.state.ia.us

Kentucky

Ron Cook
Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Telephone: (502) 573–2382
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ron.cook@mail.state.ky.us

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287–3261
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Maryland

Linda Janey
Manager, Clearinghouse and Plan Review Unit
Maryland Office of Planning
301 West Preston Street—Room 1104
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Telephone: (410) 767–4490
Fax: (410) 767–4480
linda@mail.op.state.md.us

Michigan

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Southeast Michigan Council of Governments
535 Griswold, Suite 300
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Telephone: (313) 961–4266
Fax: (313) 961–4869
pfaff@semcog.org

Mississippi

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
550 High Street
303 Walters Sillers Building
Jackson, Mississippi 39201–3087
Telephone: (601) 359–6762
Fax: (601) 359–6758

Missouri

Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Jefferson Building, Room 915
Jefferson City, Missouri 65102
Telephone: (573) 751–4834
Fax: (573) 522–4395
pohll_@mail.oa.state.mo.us

Nevada

Heather Elliott
Department of Administration
State Clearinghouse
209 E. Musser Street, Room 200
Carson City, Nevada 89701
Telephone: (775) 684–0209
Fax: (775) 684–0260
helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor
Director, New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2–1/2 Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271–2155
Fax: (603) 271–1728
jtaylor@osp.state.nh.us

New Mexica

Ken Hughes
Local Government Division
Room 201, Bataan Memorial Building
Sante Fe, New Mexico 87503
Telephone: (505) 827–4370
Fax: (505) 827–4948
khughes@dfa.state.nm.us

North Caralina

Jeanette Furney
Department of Administration
1302 Mail Service Center
Raleigh, North Carolina 27699–1302
Telephone: (919) 807–2323
Fax: (919) 733–9571
jeanette.furney@ncmail.net

North Dakota

Jim Boyd
Division of Community Services
600 East Boulevard Ave, Dept 105
Bismarck, North Dakota 58505–0170
Telephone: (701) 328–2094
Fax: (701) 328–2308
jboyd@state.nd.us

Rhade Island

Kevin Nelson
Department of Administration
Statewide Planning Program
One Capitol Hill
Providence, Rhode Island 02908–5870
Telephone: (401) 222–2093
Fax: (401) 222–2083
knelson@doa.state.ri.us

Sauth Caralina

Omeagia Burgess
Budget and Control Board
Office of State Budget
1122 Ladies Street, 12th Floor
Columbia, South Carolina 29201
Telephone: (803) 734–0494
Fax: (803) 734–0645
aburgess@budget.state.sc.us

Texas

Denise S. Francis
Director, State Grants Team
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 305–9415
Fax: (512) 936–2681
dfrancis@governor.state.tx.us

Utah

Carolyn Wright
Utah State Clearinghouse
Governor's Office of Planning and Budget
State Capitol, Room 114
Salt Lake City, Utah 84114
Telephone: (801) 538–1535
Fax: (801) 538–1547
cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director
Community Development Division
West Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558–4010
Fax: (304) 558–3248
fcutlip@wvdo.org

Wiscansin

Jeff Smith
Section Chief, Federal/State Relations
Wisconsin Department of Administration
101 East Wilson Street—6th Floor
P.O. Box 7868
Madison, Wisconsin 53707

Telephone: (608) 266–0267
Fax: (608) 267–6931
jeffrey.smith@doa.state.wi.us

Guam

Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011–671–472–2285
Fax: 011–472–2825
jer@ns.gov.gu

Puerto Rico

Jose Caballero/Mayra Silva
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940–1119
Telephone: (787) 723–6190
Fax: (787) 722–6783

North Mariana Islands

Ms. Jacoba T. Seman
Federal Programs Coordinator
Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664–2289
Fax: (670) 664–2272
omb.jseman@saipan.com

Virgin Islands

Ira Mills
Director, Office of Management and Budget
#41 Norre Gade Emancipation Garden Station, Second Floor
Saint Thomas, Virgin Islands 00802
Telephone: (340) 774–0750
Fax: (340) 776–0069
Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to *grants@omb.eop.gov* If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC 20503.

Please note: Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown above. The best source for this information is the *CFDA*.

Attachment H

Department of Health and Human Services (DHHS) Regulations Applying to All Applicants/Grantees Under The Community Food and Nutrition Program

Title 45 of the Code of Federal Regulations

Part 16—DHHS Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections
74.26—Non-Federal Audits
74.27—Allowable cost for hospitals and non-profit organizations among other things
74.32—Real Property
74.34—Equipment
74.35—Supplies
74.24—Program Income
Part 75—Informal Grant Appeals Procedures
Part 76—Debarment and Suspension from Eligibility For Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through DHHS Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by DHHS
Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of DHHS Programs and Activities

BILLING CODE 4184–01–P

APPLICANT'S CHECKLIST

Attachment I

This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed?			
Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature-and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other - additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS

FRONT MATTER			STANDARD APPLICATION FORMS			PROJECT DESCRIPTION	DISCLOSURES CERTIFICATIONS			END MATTER
COVER LETTER	Table of Contents	Project Abstract (executive summary)	SF 424	SF 424A or SF 424C	SF 424B or SF 424D	Project Descrip-tion	Certification regarding lobbying	Disclosure of lobbying activities	other Assurances and Certs	appendix resumes, letters of support, maps, etc

[FR Doc. 01–7337 Filed 3–23–01; 8:45 am]
BILLING CODE 4184–01–C

Federal Register

Monday,
March 26, 2001

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 et al.
Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Final Rule
Commercial Routes for the Grand Canyon National Park; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91, 93, 121, 135

[Docket No. FAA–2001–9218]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 4, 2000, the FAA published two final rules regarding aircraft flight operations over Grand Canyon National Park (GCNP). The first rule, the Commercial Air Tour Limitations final rule, limiting the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA), was effective on May 4, 2000. The second rule, the Airspace Modification final rule, modifying the airspace in the SFRA, was scheduled to become effective December 1, 2000. However, on November 20, 2000, the FAA published a final rule delaying the effective date of the Airspace Modification final rule until December 28, 2000, so that the FAA could adequately evaluate new safety issues raised by the air tour operators. On December 28, 2000, the FAA further delayed the airspace modifications final rule until April 1, 2001. The FAA has completed its evaluation and determined that it is necessary to delay implementing changes to the airspace, including two flight free zones in the east-end of GCNP, pending resolution of the safety issues. In a companion document in this **Federal Register** the FAA also makes available a map depicting commercial air tour routes in GCNP.

DATES: The amendment to SFAR 50–2 is effective April 1, 2001.

14 CFR 93.305 and 93.307 originally published at 61 FR 69330 on December 31, 1996 and most recently delayed until April 1, 2001 (see FR 1005, January 4, 2001) is further delayed. 14 CFR 93.305(c) and (d) and 93.307 are delayed until April 19, 2001. 14 CFR 93.305 (a) and (b) are delayed until December 1, 2001.

The amendments to 14 CFR 93.301, 93.305 (c) and (d), 93.307, and 93.309, originally published at 65 FR 17736 on April 4, 2000 and most recently delayed until April 1, 2001 (see 66 FR 1005, January 4, 2001) are further delayed until April 19, 2001. The amendments to 14 CFR 93.305 (a) and (b) originally published and most recently delayed on the same dates as set forth above are further delayed until December 1, 2001.

ADDRESSES: You may view a copy of the final rule, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov*, by selecting docket numbers FAA–01– . You may also review the public dockets on these regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 400 7th St., SW., Room 401, Washington, DC 20590.

As an alternative, you may search the **Federal Register**'s Internet site at *http://www.access.gpo.gov/su_docs for access to the final rules.*

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, (AFS–200), or Ken McElroy, Airspace and Rules Division, ATA–400, Federal Aviation Administration, Seventh and Maryland Streets, SW., Washington, DC 20591; Telephone: (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also published concurrently a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule was implemented effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Notice of Availability were scheduled to become effective December 1, 2000. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

During the course of litigation, the United States Air Tour Association and seven air tour operators raised new safety concerns. As a result, the FAA first delayed implementation of the routes until December 28, 2000 (November 20, 2000; 65 FR 69848). Following these actions, the FAA conducted an evaluation of the planned routes in the east-end of GCNP and determined that modifications could be made to the routes to enhance safety. The FAA published a second notice of availability of a map depicting proposed changes to routes in the east-end of GCNP on December 13, 2000 (65 FR 78071), with a comment period that closed on January 26, 2001. Subsequently, the FAA delayed until April 1, 2001 the implementation of the routes on January 4, 2001 (66 FR 2001). The FAA also stated that it may choose to implement the routes in the western portion of GCNP only while resolving routes in the east-end.

Agency Action

During the comment period for the second Notice of Availability of air tour routes, additional safety concerns were raised regarding the proposed revisions to the routes on the east-end of the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Consequently, the FAA is implementing the modifications to the route structure of the GCNP SFRA in two phases.

The first phase will implement the routes and airspace made final in April 2000 on the west-end (defined as all areas of the SFRA west of the Dragon corridor) of the GCNP SFRA. On the east-end (defined as the Dragon corridor east), the first phase will implement the modification to the SFRA boundary, as contained in the April 2000 final rule, by extending the SFRA boundary over the Navajo Nation lands five miles to the east. However, during this phase, the route structure on the east-end will remain almost exactly as that currently flown in the SFAR under Special Federal Aviation Regulation (SFAR) 50–2, with only slight modification to certain entry and exit points. To accomplish the dual goals of achieving substantial restoration of natural quiet in GCNP and maintaining a safe operating environment for commercial air tour operators, the FAA finds that this combination of commercial air tour routes is the most reasonable proposal for the Spring 2001 air tour season (May through November). This route configuration will go into effect on April 19, 2001. (See companion Notice of

Availability of Commercial Air Tour routes.)

This airspace modification extends from April 1 to April 19, 2001, the airspace configuration of SFAR 50–2. Because the prior agency stay ends on April 1, 2001, it is necessary to further delay the airspace until April 19, 2001. This additional extension is necessary to correlate the routes and airspace for the west-end of GCNP. On the east-end, the final rule will maintain the stay of the effective date of the Bright Angel and Desert View FFZs until December 1, 2001. This will give the FAA adequate time to determine what, if any, changes need to be made in the route structure in the east-end of GCNP for the 2002 air tour season.

The second phase of the commercial air tour route structure in GCNP would implement a potentially revised route and airspace structure on the east-end of the GCNP SFRA. It is anticipated that all revisions of the east-end would be based upon the route structure adopted in the April 2000 final rule. Implementation of the second phase will be determined after the FAA has evaluated and addressed all outstanding safety concerns. Interested persons will be afforded the opportunity to comment on final revisions to the route structure in the east-end of GCNP. The FAA anticipates that phase two modifications will be finalized in the winter 2001–2002 timeframe to be in place for the 2002 commercial air tour season.

The two phase implementation process will allow the FAA to move towards the mandate for the substantial restoration of natural quiet in GCNP by implementing the routes and airspace structure in the west-end of the GCNP. This will accomplish some goals of the April 2000 rulemaking, in that it will eliminate the Blue 1 and Blue 1A routes. In addition, the phased approach will allow the FAA to adequately evaluate and address the new safety concerns related to the routes in the east-end of GCNP while allowing commercial air tour operators adequate time to train on the revised east-end routes during the off-peak season. At the same time, the phased process will provide for the elimination of overflights of some of the traditional cultural properties identified by Native American Tribes during the National Historic Preservation Act (NHPA) Section 106 consultation process.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes requiring the modification of the airspace in GCNP to transition to a new operating environment in GCNP. The FAA has determined that because new safety concerns have been raised, which warrant further evaluation, it is necessary to implement the airspace codified in April 2000 in a phased approach.

Environmental Review

The FAA has completed a written reevaluation (WR) of the February 22, 2000 Final Supplemental Environmental Assessment (FSEA) for Special flight rules in the Vicinity of Grand Canyon National Park (GCNP). The WR examines the potential environmental impacts associated with the phased implementation of the Airspace rule and the Commercial Air Tour Route Modifications described in the FSEA. This phased approach will involve implementation of the "preferred" alternative airspace and air tour route structure as described in the FSEA for the GCNP SFRA west of Dragon Corridor. No changes to this portion of the GCNP SFRA as described in the FSEA will occur. Thus, the impact evaluation for the "preferred" alternative contained in the FSEA remains valid for the stage-one airspace and routes implementation at the west-end of the GCNP SFRA. The FAA also reviewed the planned implementation of the stage-one airspace, routes, and route modifications on the east-end and has determined that they are not significant changes from the plans analyzed under the "no action" alternative in the FSEA. Therefore, the FAA has determined that the proposed route revisions to the SFAR 50–2 route structure conform with the "no action" alternative analyzed in the FSEA. The FAA has determined that the data and analyses contained in the FSEA are still substantially valid and all pertinent conditions and requirements of the prior approval have or will be met in the current action.

While the delayed implementation of the east-end route and airspace structure will lessen the percentage of the GCNP substantially restored to natural quiet, it is only a temporary delay. The routes and airspace at the east-end of the GCNP SFRA are stayed, however, as soon as the safety concerns are addressed and the operators are given the opportunity to train in the off-peak season, new routes and airspace will be implemented in the east-end. In addition, given that the majority of the revised routes and airspace for GCNP will be implemented, during stage-one, the staged implementation process will result in a gain of substantial restoration of natural quiet for GCNP as described in the FSEA.

Therefore for the above reasons and pursuant to FAA Order 1050.1D, Paragraph 92, the FAA has determined that the contents of the Final Supplemental Environmental Assessment and its conclusions issued on February 22, 2000 are still valid. Additionally, the FAA has found that the previous Section 106 Determination of No Adverse Effect to TCPs identified by Native Americans issued for the FSEA is also still valid. Copies of the written reevaluation have been placed in the public docket for this rulemaking, have been circulated to interested parties, and may be inspected at the same time and location as this final rule.

Economic Analysis

The economic analysis completed for the final rule published April 4, 2000 evaluates the east-end and west-end operations separately since these are distinct markets. This action implements the west-end airspace structure and the economic analysis from the April 4, 2000 final rule remains valid. At this time the FAA is delaying implementation of the east-end routes, it is not taking a final action. If the agency takes a final action that is different than that published on April 4, 2000, then it may be necessary to complete a revised economic evaluation.

Initial Regulatory Flexibility Determination and Assessment

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will have only a de minimus cost impact on the certificate holders for whom costs have been estimated. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act (TAA) of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The TAA also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above Act and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Federalism Implications

This amendment 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. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The FAA has determined that this rule will not impose any unfunded mandates.

List of Subjects

14 CFR Part 91, 121, 135

Aircraft, Airmen, Aviation Safety

14 CFR Part 93

Air traffic control, Airports, Navigation (Air)

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

PART 121—[AMENDED]

1. The authority cite for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135—[AMENDED]

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44915–44717, 44722.

2. In parts 91, 121, and 135, section 9 of SFAR 50–2 is revised.

Special Federal Aviation Regulations

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ.

* * * * *

Section 9. Termination date. Section 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on April 19, 2001.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

3. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

4. Sections 93.305 and 93.307 were published on December 31, 1996 (61 FR 69330), corrected at 62 FR 2445 (January 16, 1997), and delayed at 65 FR 5397 (February 3, 2000); made effective December 1, 2000 in a rule published on April 4, 2000 (65 FR 17736), delayed until December 28, 2000 (65 FR 69846, November 20, 2000), and delayed until April 1, 2001 at 66 FR 1005 (January 4, 2001). Section 93.305(c) and (d) and 93.307 are further delayed until April 19, 2001, and § 93.305 (a) and (b) are further delayed until December 1, 2001.

5. The amendments to §§ 93.301, 93.305, 93.307 and 93.309 published on April 4, 2000 (65 FR 17736), delayed until December 28, 2000 (65 FR 69846, November 20, 2000), were further delayed until April 1, 2001 (66 FR 1005, January 4, 2001). The amendments to §§ 93.301, 93.305 (c) and (d), 93.307 and 93.309 are further delayed until April 19, 2001, and the amendments to § 93.305 (a) and (b) are delayed until December 1, 2001.

Issued in Washington, DC on March 21, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–7410 Filed 3–21–01; 4:57 pm]

BILLING CODE 4910–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: On December 13, 2000, the FAA published a notice of availability and request for comments on modifications to commercial air tour routes in Grand Canyon National Park (GCNP) made final by the April 2000 rulemaking. These modifications were proposed in response to safety concerns expressed by some commercial air tour operators conducting operations in GCNP. The comment period on the modified routes closed on January 26, 2001. On January 4, 2001, the FAA further delayed the implementation of the route structure to evaluate new safety issues. Several new safety issues remain concerning the routes proposed on the east-end of the GCNP. The FAA has resolved the safety issues on the west-end and has determined that the air tour routes and airspace structure on the west-end may be implemented. The FAA is not implementing any new air tour routes on the east-end at this time.The FAA is not implementing any new air tour routes on the east-end at this time. Consequently, the FAA is making available a map depicting final routes for GCNP on the west-end only. The FAA also publishes in this **Federal Register** a companion document modifying the airspace in GCNP to accommodate the modified route structure. The FAA makes available to the public through this notice a copy of the map showing routes that will go into effect on the west-end of GCNP on April 19, 2001, as well as the SFAR 50–2 route structure that will be retained on the east-end of GCNP.

DATES: The commercial air tour route structure depicted on the map made available by this notice is effective on April 19, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, (AFS–200), Federal Aviation Administration, Room 1205, Federal Office Building 10B, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Availability of the Proposed Routes

The FAA is not publishing the commercial air tour routes in today's **Federal Register** because they are on very large and very detailed charts that would not publish well in the **Federal Register**. You may obtain a copy of the map depicting commercial air tour routes by contacting Denise Cashmere at (202) 267–3717, by faxing a request to (202) 267–5229, or by sending a request in writing to the Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591.

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also published concurrently a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000.

During the course of litigation, the United States Air Tour Association and seven air tour operators raised new safety concerns with the air tour routes GCNP. The FAA first delayed implementation of the routes until December 28, 2000 (November 20, 2000; 65 FR 69848) in order to evaluate and address these new safety concerns. The FAA then published a second notice of availability of a map depicting proposed changes to routes in the east-end of GCNP on December 13, 2000 (65 FR 78071), with a comment period that closed on January 26, 2001. Following these actions, the FAA conducted an evaluation of the Planned Routes in the east-end of GCNP and determined that modifications could be made to the routes to enhance safety. However, there were also several safety issues raised concerning the routes on the east-end. Subsequently, on January 4, 2001, the FAA delayed implementation of the routes until April 1, 2001 (66 FR 2001). It also stated that it may choose to implement the routes in the western portion of GCNP while resolving routes in the east-end.

Agency Action

During the comment period for the second Notice of Availability of air tour routes, additional safety concerns were raised regarding the proposed revisions to the routes on the east-end of the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Consequently, the FAA is implementing the modifications to the route structure of the GCNP SFRA in two phases.

The first phase will implement the routes and airspace on the west-end of the GCNP SFRA (defined as all areas within the SFRA west of the Dragon Corridor). On the east-end (defined as the Dragon corridor and all areas within the SFRA to the east), the first phase will implement the modification to the SFRA boundary as contained in the April 2000 final rule. Specifically, the SFRA boundary over the Navajo Nation lands is extended five miles to the east. However, during this phase, the route structure on the east-end will remain almost exactly as that currently flown in the SFRA under Special Federal Aviation Regulation (SFAR) 50–2, with only slight modification to certain entry and exit points. To accomplish the dual goals of the substantial restoration of natural quiet in GCNP and a continued safe operating environment for commercial air tour operators, the FAA finds that this combination of commercial air tour routes is the most reasonable proposal for the Spring 2001 air tour season.

The second phase of the commercial air tour route structure in GCNP is intended to involve implementation of a potentially revised route and airspace structure on the east-end of the GCNP SFRA based upon the route structure adopted in the April 2000 final rule. Implementation of the second phase will be determined after the FAA has evaluated and addressed all outstanding safety concerns. Interested persons will be afforded the opportunity to comment on final revisions to the route structure in the east-end of GCNP. The FAA anticipates that these final modifications will be in place for the 2002 commercial air tour season.

The two-phase implementation process will allow the FAA to move toward the mandate for substantial restoration of natural quiet in GCNP with the implementation of the routes and airspace structure in the west-end of the GCNP. This will accomplish some goals of the April 2000 rulemaking in that it will eliminate the Blue 1 and Blue 1A routes. In addition, the phased approach will allow the FAA to adequately evaluate and address the remaining new safety concerns related to the routes in the east-end of GCNP while commercial air tour operators are able to train on the revised routes during the off-peak season. This process will temporarily maintain the SFAR 50–2 route structure at the east-end of the

SFRA during the first phase. At the same time, the phased process will provide for the elimination of overflights of some traditional cultural properties identified by Native American Tribes during the National Historic Preservation Act (NHPA) Section 106 consultation process.

Comments Received on the December 2000 Notice of Availability of Routes

Comments were received from the Sierra Club, Utah and Toiyabe (Nevada) Chapters; United States Department of Agriculture, Forest Service; Grand Canyon Airlines (GCA); Nancy Christopherson; Helicopter Association International (HAI); AirStar Helicopters; United States Air Tour Association (USATA); Dennis Brownridge, President, Friends of the Grand Canyon; and Jim McCarthy, Designated Editor representing Arizona Raft Adventures, Friends of the Grand Canyon, Grand Canyon Chapter of the Sierra Club, Grand Canyon River Guides, Grand Canyon Trust, Nature Sounds Society, National Parks Conservation Association, and the Wilderness Society (Environmental coalition). A majority of the comments were pertinent to the proposed routes for the east-end of the Grand Canyon, specifically Dragon Corridor, Zuni Corridor, Desert View, Marble Canyon and the proposed route over the Saddle Mountain Ridge. The FAA has elected to stay the April 2000 routes in the east-end until the new safety concerns can be resolved. Any comments pertaining to the east-end will be responded to in a future document.

Comment: The environmental coalition raised the issues of congressional intent and legal mandate. The commenter states that Pub. L. 100–91 calls for "appropriate action to protect the park and visitors," and the NPS plan "shall provide for substantial restoration of natural quiet." The commenter states further that nowhere did Congress direct the agencies to temper, delay, or compromise the mandate according to industry needs. It also states that "even with the weak NPS definition, the agencies will not come close to achieving the required restoration."

FAA response: Federal agencies have discretion to address problems using a phased approach. The April 2000 Airspace rule and Notice of Availability for commercial air tour routes are steps in a process to achieve substantial restoration of natural quiet at GCNP in accordance with Pub. L. 100–91. The FAA and NPS have taken a reasoned and incremental approach to assess the steps in the process as they are taken, and adjusting as necessary with subsequent steps. Both agencies agreed to a logical, incremental process that first mandated operational caps, curfews and limitations to routes. To this end, the FAA was directed by Congress to implement the recommendations from the NPS unless they would aversely affect aviation safety. As the result of the ongoing litigation, the air tour operators have raised new aviation safety concerns that the FAA must appropriately evaluate and address. The delay in implementing the routes and airspace structure on the east-end of GCNP will allow the FAA time to adequately evaluate and address the new safety concerns. The delay will also provide the opportunity for the air tour operators to train on the potentially revised routes during the off-peak season. The timing of training is also an aviation safety consideration.

Comment: The environmental coalition states that the plain language definition of substantial restoration of natural quiet requires that the test be met every day, regardless of season.

FAA response. Public Law 100–91 and the definition of substantial restoration did not specify the time period of interest, other than "day". The NPS definition of "substantial restoration of natural quiet" involves time, area and acoustic components. Because many park visitors typically spend limited time in particular sound environments during specific park visits, the amount of aircraft noise present during those specific time periods can have great implications for the visitor's opportunity to experience natural quiet in those particular times and spaces. Based upon noise studies, the NPS has concluded that a visitor's opportunity to experience natural quiet during a visit, and the extent of noise impact depends upon a number of factors. These factors include: the number of flights; the sound levels of those aircraft as well as those of other sound sources in the natural environment; and the duration of audible aircraft sound experienced by a visitor. Effects of different time periods (*i.e.*, annual average, shoulder season, summer season, peak day) were evaluated in the Final Supplemental Environmental Assessment, February 2000.

Comments: The environmental coalition, AirStar, and others commented that the charts provided with the proposals are helpful but have room for improvement. Significant geological and non-physical features should be shown.

FAA response: The FAA works with NOAA to print the reference charts. These charts are created to familiarize air tour operators with respect to the new routes and the FAA is convinced the charts provide sufficient detail for this purpose. The FAA and NPS will work together to better identify features, but not to the detriment of safe air navigation.

Comment: The environmental coalition and Friends of Grand Canyon state a strong endorsement for the proposed closing of Blue 1 and the Fossil Corridor.

FAA response: The agencies believe the closing of Blue 1 and Fossil Corridor will make significant strides in the incremental process of substantial restoration of natural quiet at GCNP.

Comment: The environmental coalition believes it is time to try a different approach—a meeting between the FAA, the NPS and the representatives of their organizations.

FAA response: The FAA and the NPS held a stakeholder meeting which was well intentioned, but provided no useful results due to an unwillingness of stakeholders to negotiate.

The FAA and NPS would be willing to try again in the future, if all parties are willing to participate in a process that would encourage useful negotiation.

Comment: The Sierra Club of Utah and the Toiyabae Chapter recommend a definition of "below the rim" as below the elevation of any canyon rim or feature within three miles horizontally of the route.

FAA response: As a general rule, flights do not operate below the rim. In certain isolated situations, aircraft being operated on certain fixed routes and at fixed altitudes may operate below the ground level of the rim temporarily. This occurs because of terrain fluctuations. Safety is not compromised by allowing these flights to operate below the rim for a short period of time. In Public Law 100–91, Congress granted the FAA, in consultation with the NPS, the authority to determine rim level because "delineation of the area needs to be made taking into account the varying rim levels of the canyon and the potential impact of this provision on flight activities and operations." S. Rep. 91 (100th Cong., 1st Sess. (1987)). The specific examples provided by this commenter relate to operations in the east-end of GCNP. These specific comments may be addressed during the east-end review.

Comment: Grand Canyon Airlines and USATA commented on the lack of a definition of quiet aircraft incentive routes.

FAA response: The quiet technology working group is currently working on

a rulemaking to designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology. Once such a designation has been completed, publicly reviewed and issued, the FAA, in consultation with the NPS and the advisory group (see Section 805, Pub. L. 106–181), shall establish incentive routes for commercial air tour operators who employ quiet aircraft technology. In Public Law 106–181, Congress mandated that the quiet technology incentive routes must be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.

Comment: GCA urges transponders on all air tour aircraft.

FAA response: Although this comment may have some merit, it is beyond the scope of this notice.

Comment: HAI, USATA and AirStar state that the FAA failed to provide sufficient information upon which to base meaningful comments, specifically detailed route narrative and arrival descriptions.

FAA response: The FAA provided a map of the GCNP airspace detailing the changes to the east-end that the FAA believed would rectify the problems identified by the air tour operators. This map shows the proposed route modifications together with the east-end route structure as finalized on April 4, 2000, elevations of certain topographic features, reporting points, and other topographic features (rivers, canyons, etc.). Flight Standards personnel reviewed the map and considered it adequate to evaluate the proposed route structure.

The route narratives and arrival/departure procedures are part of Las Vegas Flight Standards District Office (LAS FSDO) Order 1380.2A. This is consistent with standard route descriptions that have been promoted and distributed since 1987. The Procedures Manual provides landmark information, specific route descriptions, altitudes and reporting points for each route, in addition to operational and training procedures. These items typically are not subject to notice and comment because the FAA requires the flexibility to change such items in the interest of safety as required, without delay. Notice of changes to the Procedures Manual is provided by the LAS FSDO directly to authorized certificate holders.

Comment: HAI and USATA state that connecting proposed routes on the west-end to existing SFAR 50–2 routes on the east-end require separate evaluations of safety, environmental impact, economic impact, feasibility, and noise contribution.

FAA response: The FAA disagrees that implementing the new west-end routes in the GCNP while maintaining the SFAR 50–2 route structure on the east-end requires a separate safety and feasibility study together with an economic impact analysis. The new west-end routes and the SFAR 50–2 east-end routes are separate and distinct from each other. The only area in which the two route structures begin to come together is a Grand Canyon National Airport (GCN) at Tusayan, Arizona. At this point, the new routes (Blue Direct North and Blue Direct South) meet outside the controlled airspace at GCN at the same points as the current SFAR 50–2 route system. The safety issues on the new west-end routes have already been evaluated by the FAA during the rulemaking process, culminating with the Notice of Availability issued April 4, 2000.

The economic analysis completed for the final rule published April 4, 2000 evaluates the east-end and west-end operations separately since these are distinct markets. This analysis is still valid. The FAA is only delaying implementation of the east-end routes, it is not taking a final action. If the agency takes a final action that is different than that published on April 4, 2000, then it may be necessary to complete a revised economic evaluation.

Comment: AirStar recommends that once an entire proposal is developed, the FAA must allow familiarization and evaluation flights for the operators to make valid comments.

FAA response: The FAA agrees that allowing operators to fly proposed routes would certainly provide the operators with first-hand operational experience with the proposed routes. However, to facilitate this, especially in the east-end of the GCNP, the FAA would have to shut down the airspace for a period of time since the SFAR 50–2 routes and the new route modifications would not be compatible. This would cause further economic hardship on the operators, especially the smaller operators.

Comment: AirStar and USATA state that the FAA is moving down an ill-advised road. SFAR 50–2 has provided a simple accident-free environment for greater than ten-years. AirStar states that they cannot understand why the FAA persists in exposing the flying public to additional risk. USATA states that any new routes be at least as safe as SFAR 50–2.

FAA response: Public Law 100–91 requires the FAA to develop an air tour structure that is both safe and improves the substantial restoration of natural quiet in the GCNP. The route structure being implemented by this notice is consistent with this statute. The portion of the route structure being delayed provides additional gains in substantial restoration of natural quiet but has unresolved new safety concerns, therefore it is being delayed until those concerns are resolved.

Comment: USATA states that the new Bush Administration should be given the opportunity to review all government actions of the previous administration.

FAA response: The new Administration has elected not to further delay the implementation of the rules published April 4, 2000. Under direction of the new Administration, this action was revised and it was determined that this action would not be further reviewed.

Issued in Washington, DC on March 13, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 01–7411 Filed 3–21–01; 4:57 pm]

BILLING CODE 4910–13–M

Federal Register

Monday,
March 26, 2001

Part V

The President

Proclamation 7417—Education and Sharing Day, U.S.A., 2001

Federal Register
Vol. 66, No. 58
Monday, March 26, 2001

Presidential Documents

Title 3—

The President

Proclamation 7417 of March 22, 2001

Education and Sharing Day, U.S.A., 2001

By the President of the United States of America

A Proclamation

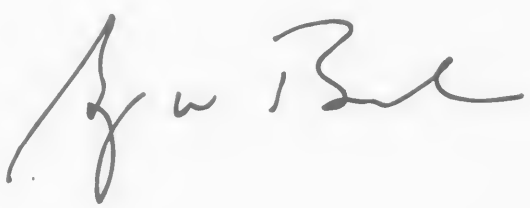
With the dawn of a new century, America's youth face a world of nearly unlimited possibilities. New advances in technology, medicine, and science offer the potential for great progress. We must ensure that every child has the technical skills needed to pursue success in their respective fields. However, they also require the wisdom and understanding to make sense of an ever-changing world.

As teachers, parents, and citizens, we have a responsibility to pass on more than just academic knowledge to our children. We also need to provide them with the moral strength to see them through turbulent and challenging times. An education that nurtures goodness and kindness gives direction and dignity to the lives of our young people and strengthens our communities. Humanity has long recognized such core and never-changing ethical values as vital to the well-being of a society and its citizenry.

Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, clearly understood the importance of fostering character. His establishment of educational, social, and rehabilitative institutions bettered the lives of people both in this country and abroad. As he once said, "All educational efforts are basically meaningless unless built on the solid foundation of good character." Next year marks the 100th anniversary of the Rebbe's birth, but his legacy of teaching that a nation's true greatness is measured by whether it produces citizens of compassion and character remains timeless.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 4, 2001, as Education and Sharing Day, U.S.A., 2001. By teaching children the highest standards of ethical behavior, Americans prepare our next generation of leaders to pursue meaningful lives as members of a decent and caring society.

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



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Radio stations; table of assignments:
- California; published 2-21-01
- Texas; published 2-22-01

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Minerals Management Service

Outer Continental Shelf oil and gas leasing:
- Leasing incentive framework establishment; bidding systems and joint bidding restrictions; and royalty suspensions; published 2-23-01

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Aliens—
  - Status adjustment to lawful permanent resident; certain eligibility restrictions temporarily removed; published 3-26-01

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; ddomestic licensing:
- Components; construction, inservice inspoection, and inserving testing; industry odes and standards; correction; published 3-26-01

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Louisiana; published 2-22-01

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Commodity Credit Corporation

Loan and purchase programs:
- Livestock indemnity program; comments due by 4-6-01; published 3-7-01

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- On-line antimicrobial reprocessing of pre-chill poultry carcasses; performance standards; comments due by 4-2-01; published 1-30-01

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National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permits; comments due by 4-3-01; published 3-19-01
- Northeastern United States fisheries—
  - Summer flounder, scup, and black sea bass; comments due by 4-6-01; published 3-7-01
- Northeastern United States fisheries—
  - Atlantic herring; comments due by 4-4-01; published 3-5-01
  - Northeast multispecies and Atlantic sea scallop; comments due by 4-4-01; published 3-5-01
  - Surf clam and ocean quahog; comments due by 4-6-01; published 3-7-01

ENERGY DEPARTMENT

Acquisition regulations:
- Conditional payment of fees, profit, and other incentives; comments due by 4-5-01; published 3-6-01

ENVIRONMENTAL PROTECTION AGENCY

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  - Compliance certification requirements; amendments; comments due by 4-2-01; published 3-1-01

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  - Unbundled network elements use to provide exchange access service; comments due by 4-5-01; published 3-5-01

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- Digital broadcast television; reception capability; issues and concerns; comments due by 4-6-01; published 2-13-01

Radio stations; table of assignments:
- Alaska; comments due by 4-2-01; published 2-27-01
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- New York and Pennsylvania; comments due by 4-2-01; published 2-22-01

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Food and Drug Administration

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- Dimethyl dicarbonate; comments due by 4-6-01; published 3-7-01

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Fish and Wildlife Service

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  - Various plants from Maui and Kahoolawe, HI; comments due by 4-2-01; published 2-22-01
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LIST OF PUBLIC LAWS

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S.J. Res. 6/P.L. 107–5

Providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics. (Mar. 20, 2001; 115 Stat. 7)

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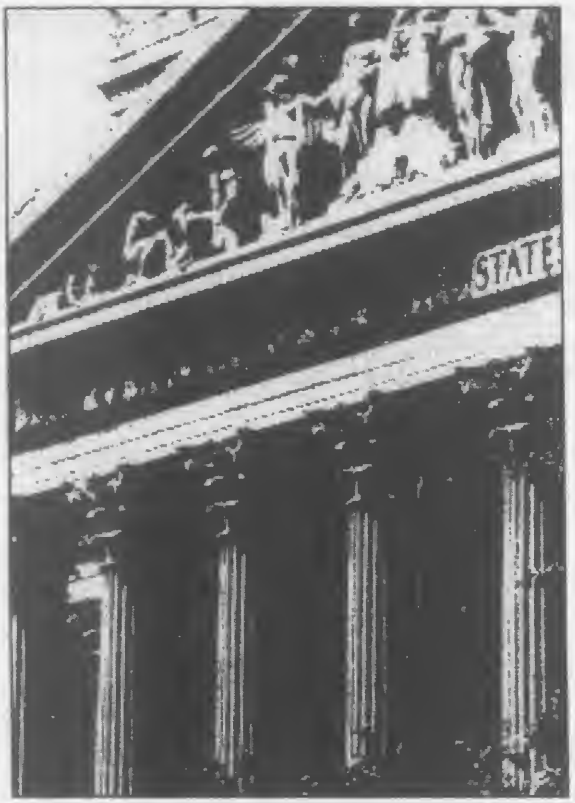

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