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9–9–03 Tuesday
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Presidential Documents

Title 3—

The President

Proclamation 7701 of September 4, 2003

National Days of Prayer and Remembrance, 2003

By the President of the United States of America

A Proclamation

As we approach the second anniversary of September 11, 2001, we remember all that we lost as Americans and recognize all that we have witnessed about the character of America. During these National Days of Prayer and Remembrance, we honor those who were killed and their families, and we ask God for strength and wisdom as we carry out the noble mission that our Nation began that morning.

The passage of time cannot erase the pain and devastation that were inflicted on our people. We will always remember those who were brutally taken from us. And we ask God to comfort the loved ones left behind; their courage and determination have inspired our Nation.

We thank God for the unity and compassion Americans have demonstrated since September 11, 2001. The great strength of America is the heart and soul of the American people. And we will continue to help those who are hurting or are in need.

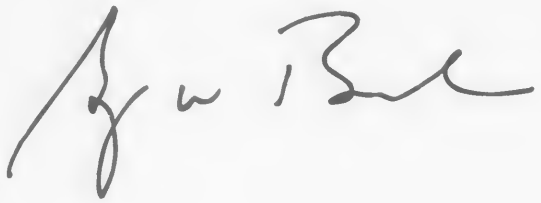
We pray that God watch over our brave men and women in uniform. We are grateful to them, and to their families, for their service and sacrifice. We pray for peace and ask God for patience and resolve in our war against terror and evil.

This conflict was begun on the timing and terms of others. It will end in a way, and at an hour, of our choosing.

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 Friday, September 5, through Sunday, September 7, 2003, as National Days of Prayer and Remembrance. I ask that the people of the United States and places of worship mark these National Days of Prayer and Remembrance with memorial services, the ringing of bells, and evening candlelight remembrance vigils. I invite the people of the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–23089
Filed 9–8–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7702 of September 4, 2003

Patriot Day, 2003

By the President of the United States of America

A Proclamation

Two years ago, more than 3,000 innocent people lost their lives when a calm September morning was shattered by terrorists driven by hatred and destruction.

On that day, and in its aftermath, we saw the greatness of America in the bravery of victims; in the heroism of first responders who laid down their lives to save others; in the compassion of people who stepped forward to help those they had never met; and in the generosity of millions of Americans who enriched our country with acts of service and kindness. Since that day, we have seen the greatness of America further demonstrated in the courage of our brave men and women in uniform who have served and sacrificed in Afghanistan, in Iraq, and around the world to advance freedom and prevent terrorist attacks on America.

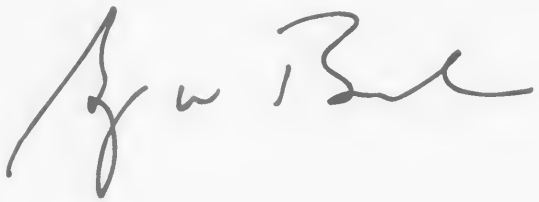
As we remember September 11, 2001, we reaffirm the vows made in the earliest hours of our grief and anger. As liberty's home and defender, America will not tire, will not falter, and will not fail in fighting for the safety and security of the American people and a world free from terrorism. We will continue to bring our enemies to justice or bring justice to them. This Patriot Day, we hold steady to this task.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as "Patriot Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 11, 2003, as Patriot Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, including remembrance services and candlelight vigils. I also call upon the Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Patriot Day. In addition, I call upon all Americans to display the flag at half-staff from their homes on that day and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who lost their lives as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule limits the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

DATES: Effective September 10, 2003; comments received by October 9, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule limits the volume of small red seedless grapefruit entering the fresh market. This rule restricts the volume of sizes 48 and 56 fresh red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing a weekly percentage for each of the 22 weeks, beginning September 15, 2003. This rule supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This action should help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended

weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule limits the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2003–04 season. This rule establishes weekly percentages at 45 percent for weeks 1 and 2 (September 15 through September 28, 2003), 35 percent for weeks 3 through 19 (September 29, 2003, through January 25, 2004), and 40 percent for weeks 20, 21, and 22 (January 26 through February 15, 2004). The Committee recommended this action unanimously at a meeting on July 1, 2003. This action is similar to those taken the previous six seasons.

The Committee believes the over shipment of smaller-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1$^{3}/_{5}$ bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for larger, more profitable sizes would increase. Consequently, in 1996, the Committee recommended changing their rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks of the 2001–02 and 2002–03 seasons. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

The Committee believes for the 2003–04 season small sized red seedless grapefruit would again negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000-carton level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted to utilize the provisions of § 905.153 and establish percentage of size regulation for each of the 22 weeks of the regulatory period for the 2003–04 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. At the meeting, the Committee reviewed the results of a study commissioned to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled "An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule," dated July 1, 2003, evaluated the effectiveness of past percentage of size regulation.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, $7.06 per carton in December, and remained at around $6.90 in April.

Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three years prior to using percentage of size regulation. The Barber study shows that prices for the past six seasons would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation compared to $3.08 for the three years prior to regulation.

The University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2001–2002 season. The cost to produce grapefruit for the fresh market was estimated at $1,008.77 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production has averaged around 417 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.42 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with

regulation, 1997–98 through 2001–02, the on-tree value has averaged $2.45 per box for Indian River grapefruit.

Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals in establishing percentage of size regulation was to help maintain the price differential between the prices for larger sizes and those for smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. The last three seasons, the f.o.b. price for a size 27 has averaged around $13.50 per carton in October. This compares to an average f.o.b. price of around $5.80 per carton for a size 56 during the same period. In the three years before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three years before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the six years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.43 at the end of October, $3.78 in mid-December, and remained at around $3.10 the first week in May.

The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), these margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit size 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last six seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 90 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited effect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of past regulations, there are other circumstances warranting the consideration of establishing percentage of size regulation. For the three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February averaged around 53 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These three seasons, 1999–2000 through 2001–02, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98. For the seven seasons prior to the 2002–03 season there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. For the 2002–03 season, grapefruit sized larger than in the previous seasons and small sizes were not as dominant a factor. However, while the crop sized well throughout last season, it is unclear how the 2003–04 crop will size. It is possible that the 2003–04 crop may produce the volume of small sizes represented in the majority of past seasons, making an even greater supply of small-sized fruit available for market.

Problems with the European and Asian markets could also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. However, the reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season due to their weak economies. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 48 percent of red seedless grapefruit is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and is currently not profitable. Of the last six years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

Statistics from the Florida Department of Citrus show there is currently a 40-week inventory of red seedless grapefruit juice from last season. By the start of the season, it is projected that over 35 weeks worth of juice will remain in inventory. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2003–04 season will most likely mirror prices from past seasons and remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional

volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, 2000–01, and 2001–02 had an average economic abandonment of two million boxes or more of red seedless grapefruit. Data for the 2002–03 season will not be published until September. However, it is likely some economic abandonment did occur last season.

Economic abandonment and prices falling below the cost of production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has a positive impact on price and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the last six seasons has been effective and that problems successfully addressed by percentage of size regulation will return without regulation. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2003–04 season. The Committee recommended establishing weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and 40 percent for weeks 20, 21, and 22.

The Committee considered the percentages set last year as a basis for discussing percentages for the 2003–04 season. They believe the percentages set last year worked well, and decided to make their initial recommendation for each of the 22 weeks at the same levels. Committee members believed setting last season's percentages higher than the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages. The first two weeks are set at 45 percent because it is likely there will only be a limited volume shipped. In the last five seasons, total shipments of red seedless grapefruit have only exceeded 250,000 cartons once in the first two weeks of the season.

Setting weekly percentages at 35 percent for the majority of weeks provides a total allotment of 252,610 cartons (35 percent of the total industry base of 721,743 cartons) per week. While this is slightly more than 250,000 cartons, it is unlikely all available allotment will be used each week, and this allows individual handlers some additional flexibility. The increase to 40 percent for the last three weeks offers a little more allotment providing some transition to the period without regulation and helps to prevent the dumping of small sizes following the end of regulation. The Committee believes these percentages provide some flexibility while holding weekly shipments at sizes 48 and 56 close to the 250,000-carton mark.

More information helpful in determining the appropriate weekly percentages will be available after August. At the time of the July meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. Further, the first reports on how the crop is sizing will not be available until after September. Consequently, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant.

The Committee recognized they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. This will help the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

Therefore, this rule establishes weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and at 40 percent for weeks 20 through 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period begins the third Monday in September, September 15, 2003. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides the allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2002–03 season was approximately $7.24 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The over shipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. This rule sets the weekly percentages at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This action supplies enough small red seedless grapefruit, without saturating all markets with small sizes. This action will help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action at a meeting on July 1, 2003.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates spot picking would only fractionally increase harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments. Approximately 227 loans and transfers were utilized last season. Statistics for 2002–03 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the 2003–04 season set at the same levels as last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2003–04 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, to an average f.o.b. price of $7.06 per carton in December, and remained at around $6.90 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three prior years.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The Barber study stated that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per 4/5 bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. With supply in excess of demand, this rule is not expected to impact consumer prices or demand. The benefits of this rule are expected to be available to all red

seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing this action. One alternative discussed was changing the way loans and transfers are handled. Another alternative discussed was changing the way allotment base is calculated. The Committee agreed both alternatives should first be thoroughly reviewed by the Regulation Subcommittee to consider options to bring before the full Committee.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market during the first 22 weeks of the 2003–04 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in place when the regulatory period begins September 15, 2003, and handlers need time to consider their allotment and how best to service their customers; (2) the industry has been discussing this issue for some time, and the Committee has kept the industry well informed; (3) this action has been widely discussed at various industry and association meetings, and interested persons have had time to determine and express their positions; (4) this action is similar to those recommended in previous seasons; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. A comment period of 30 days is appropriate because it will allow for any needed intra-seasonal changes to be made in a timely manner.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks, are as follows:

Week	Weekly percentage
(a) 9/15/03 through 9/21/03	45
(b) 9/22/03 through 9/28/03	45
(c) 9/29/03 through 10/5/03	35
(d) 10/6/03 through 10/12/03	35
(e) 10/13/03 through 10/19/03	35
(f) 10/20/03 through 10/26/03	35
(g) 10/27/03 through 11/2/03	35
(h) 11/3/03 through 11/9/03	35
(i) 11/10/03 through 11/16/03	35
(j) 11/17/03 through 11/23/03	35
(k) 11/24/03 through 11/30/03	35
(l) 12/1/03 through 12/7/03	35
(m) 12/8/03 through 12/14/03	35
(n) 12/15/03 through 12/21/03	35
(o) 12/22/03 through 12/28/03	35
(p) 12/29/03 through 1/4/04	35
(q) 1/5/04 through 1/11/04	35
(r) 1/12/04 through 1/18/04	35
(s) 1/19/04 through 1/25/04	35

Week	Weekly percentage
(t) 1/26/04 through 2/1/04	40
(u) 2/2/04 through 2/8/04	40
(v) 2/9/04 through 2/15/04	40

Dated: September 5, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–23045 Filed 9–5–03; 12:37 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV03–905–2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the regulations for seeded grapefruit under the Florida citrus marketing order and for seeded grapefruit imported into the United States. The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and is administered locally by the Citrus Administration Committee (committee). The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. Production of seeded grapefruit in Florida has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. The volume remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

DATES: September 10, 2003; comments received by November 10, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule removes the regulations for seeded grapefruit under the order for Florida citrus. Thus, handlers of seeded grapefruit are no longer subject to minimum grade, size, assessment, and reporting requirements under the order. Production has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. For the purposes of this interim final rule, the term "domestic shipments" includes shipments between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States. The volume of fruit remaining at the end of the season is small and has difficultly meeting grade requirements. This rule will help the industry maximize fresh shipments and returns for Valencia and

other late type oranges. These actions were unanimously recommended by the committee at its meeting on July 1, 2003.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. The grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Currently, the minimum grade for domestic seeded grapefruit is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784), with a minimum size of $3^{12}/_{16}$ inches in diameter for domestic shipments, and $3^{9}/_{16}$ inches for export shipments. The minimum grade for domestic Valencia and other late type oranges is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), with a minimum size of $2^{8}/_{16}$ inches in diameter for both domestic and export shipments.

Under §§ 905.51 and 905.52 of the order, the committee has authority to recommend to USDA the varieties of citrus to be regulated. This rule modifies § 905.306 by removing seeded grapefruit from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). The removal of seeded grapefruit from these tables has the effect of removing the grade and size requirements for seeded grapefruit under the order. Also, assessment and reporting requirements would no longer apply to seeded grapefruit. In addition, this rule further amends Table I of § 905.306 by reducing the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31, each season.

In making its recommendation, the committee recognized that seeded grapefruit is no longer significant in terms of shipments and market share. During the 2002–03 season, only 150 cartons of seeded grapefruit were shipped to the fresh market. This is down from 4,705 cartons shipped in the 1998–99 season. Currently, shipments of seeded grapefruit represent less than .0005 percent of fresh shipments of Florida grapefruit. Seeded grapefruit production has declined as new seedless varieties have been developed and planted. Consequently, the committee determined that removing seeded grapefruit varieties from the order regulations will not have a negative impact on the grapefruit market.

In addition, this rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late oranges. The committee recommended reducing the minimum grade requirements for Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 2 external grade with a U.S. No. 1 internal grade from June 15, 2004, to July 31, 2004, and during the same period of each season thereafter. Valencia and late type oranges have difficulty meeting grade requirements late in the season. This is usually due to regreening, which is considered a defect under the U.S. Standard for Grades of Oranges.

At the end of the season growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes that permitting the shipment of a U.S. No. 2 external grade during the specified time would help the industry maximize fresh shipments and returns for Valencia and other late type oranges. Consequently, the committee recommended that during the period June 15 to July 31 the grade standard be lowered to U.S. No. 2 external grade with U.S. No. 1 internal grade for Valencia and other late type oranges shipped to domestic markets.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule removes the minimum size and grade requirements for seeded grapefruit under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). The minimum grade and size requirements are specified in a table in paragraph (a) of § 944.106. This rule removes the minimum grade and size requirements for imported seeded grapefruit to reflect the change being made under the order for seeded grapefruit grown in Florida.

Section 8e import requirements for oranges are based on the marketing order for South Texas oranges and as such will not be impacted by this relaxation.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit and Valencia and other late type orange handlers subject to regulation under the order, approximately 11,000 producers of Florida citrus in the regulated area, and approximately 10 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2002–03 season was approximately $7.24 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season are estimated at 28.3 million cartons of grapefruit. The average annual f.o.b. price for fresh Florida Valencia and other late type oranges during the 2002–03 season was approximately $6.99 per carton, and total fresh shipments are estimated at 3,669,000 cartons. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit and Valencia and other late type orange shipments. Using the average f.o.b. prices, at least 75 percent of the grapefruit and Valencia and other late type orange handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit and Valencia and other late type orange handlers may be classified as small entities. In addition, based on information from the Foreign Agricultural Service, USDA, the dollar

value of imported grapefruit ranged from $902,000 in 1998 to $2,018,000 during the 2002 season. Using these numbers, all grapefruit importers may be classified as small entities. The majority of Florida grapefruit and Valencia and other late type orange producers may also be classified as small entities.

This rule removes seeded grapefruit from regulation under the order. Handlers of seeded grapefruit will no longer be required to meet the minimum grade and size requirements and will not be subject to assessments and reporting requirements. Removing these varieties from the minimum grade and size requirements will have no significant impact on the grapefruit market. This rule also reduces the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31 each season. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. Section 905.306 of the order's rules and regulation specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. The Committee unanimously recommended this action at a meeting on July 1, 2003.

During the 2002–2003 season, only 150 cartons of seeded grapefruit were shipped out of a total of 28.3 million 4/5 bushel cartons of seedless grapefruit. Production of seeded varieties has declined as newer seedless varieties have been developed and planted. Current market share and shipment levels justify removal of the order requirements for seeded grapefruit.

Valencia and late type oranges have difficulty meeting grade requirements late in the season. At the end of the season, growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes permitting the shipment of a U.S. No. 2 external grade with a minimum U.S. No. 1 internal grade from June 15 to July 31 for domestic shipments will help the industry maximize fresh shipments and returns for Valencia and other late type oranges.

This rule is expected to have a positive impact on affected entities as it relaxes handling requirements. With this rule removing seeded grapefruit from the varieties regulated, handlers will be able to market these varieties free from order requirements. In addition, the relaxation in grade requirements from June 15 to July 31 each season for Valencia and other late type oranges will allow handlers to make additional supplies available for the fresh domestic market, thus, increasing returns. No additional costs are imposed on growers, handlers, and importers with this rule. The benefits derived from this change are expected to benefit both large and small entities equally.

During the period January 1 through December 31, 2002, imports of grapefruit totaled 23,246 metric tons (approximately 1,100,000 cartons). The Bahamas were the principal source, accounting for nearly 99 percent of the total. Remaining imports were supplied by Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the requirements for domestic seeded grapefruit shipments, this change must also be applicable to imported grapefruit. This rule removes the import requirements for seeded grapefruit. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers.

One alternative to this action was to make no changes to the order's handling regulations. However, the committee believes seeded grapefruit varieties have no significant impact on the grapefruit market and that action should be taken to remove them from the handling regulations. In addition, the committee believes making additional supplies of oranges available late in the season may increase returns. Therefore, the alternative of making no changes was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the removal of seeded grapefruit from requirements currently prescribed under the marketing order for Florida citrus and the grapefruit import regulation. This rule also invites comments on the relaxation of minimum grade requirements for fresh Valencia and other late type oranges. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers will begin shipments of seeded grapefruit in mid-September 2003 and the removal of regulations should be effective by that time; (2) the committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 905 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 2. Section 905.306 is amended by:

■ a. In paragraph (a), by removing under the heading "Grapefruit", entries for "Seeded, except red" and "Seeded, red" from Table I and under the heaading "Oranges" revising the entry for "Valencia and other late type";

■ b. In paragraph (b), by removing under the heading "Grapefruit" entries for "Seeded, except red" and "Seeded, red" from Table II.

The revisions to Table I read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* *	* *	* *	*
Valencia and other late type	August 1 June 14	U.S. No. 1, U.S. No. 2, External	2 8/16
	June 15 July 31	U.S. No. 1, Internal	2 8/16
* *	* *	* *	*

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. In § 944.106(a), the entry for "Seeded" is removed from the table.

Dated: September 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22948 Filed 9–4–03; 3:16 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 550

[No. 2003–44]

RIN 1550–AB80

Federal Savings Associations—Operations, Agency Offices; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulation governing agency offices of federal savings associations to conform that regulation to recent changes to OTS's fiduciary activities regulations. OTS is also removing an incorrect parenthetical in 12 CFR 550.136, OTS's regulation governing the extent to which state law applies to the fiduciary activities of a federal savings association.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, (202) 906–7170, Kevin Corcoran, Special Counsel, Business Transactions Division, (202) 906–6962, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, Examination Policy Division, (202) 906–5636, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

On December 12, 2002, OTS amended its regulations governing the fiduciary activities of federal savings associations, found at 12 CFR part 550.[1] One of those amendments was to 12 CFR 550.70, which sets out when a federal savings association must obtain OTS approval or file a notice before exercising fiduciary powers. Under that rule, if a federal savings association wants to commence fiduciary activities in a new state that are not materially different from those that OTS has already approved for the association, it need not file a new fiduciary powers application. Rather, the association needs to file, within ten days after commencing the activities in the new state, a written notice that identifies the new state, describes the fiduciary activities the association is conducting in the new state, and provides sufficient information supporting a conclusion that those activities are permissible in the new state. If an association proposes to open an agency office in any state to perform only activities ancillary to its fiduciary business, or to open a new agency office in a state in which the association is already conducting approved fiduciary activities, no fiduciary application or notice is required.

To minimize potential confusion about applicable procedures, OTS today is conforming its agency office regulation, 12 CFR 545.96, to reflect this change in the fiduciary activities regulations. Under subparagraph (a) of § 545.96, a federal savings association may, without OTS's approval, establish and maintain agency offices that only service and originate (but not approve) loans and contracts, or manage or sell real estate owned by the federal savings association. Subparagraph (b) of the regulation states that, except for payment on savings accounts, a federal savings association may conduct activities not listed in subparagraph (a) at an agency office with OTS approval. The regulation does not currently address fiduciary activities, nor does it indicate how it interacts with part 550.

In the preamble to the proposed amendments to § 550.70, OTS explained in detail why a new fiduciary powers application was not necessary when a federal savings association wanted to conduct already approved fiduciary activities in a new state:

[1] 67 FR 76293 (December 12, 2002).

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise [citation omitted]. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations. * * * Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. * * * [T]he proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application. * * * OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities.

The same reasoning applies even when the association creates a new agency office to conduct previously approved fiduciary activities or activities ancillary to its fiduciary business.

Accordingly, OTS believes that it does not need to approve an agency office that a federal savings association creates to conduct these activities. OTS therefore is amending 12 CFR 545.96 to add fiduciary activities to subparagraph (a). Under the new rule, a federal savings association may, without OTS approval, establish and maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business. Under 12 CFR 550.70, of course, when an association establishes an agency office to conduct fiduciary activities in a new state, the association must file, within ten days after commencing those activities, a written notice containing the information required under 12 CFR 550.125.[2] Moreover, for clarification purposes, we are amending § 545.96 to change all references in the regulation from "agency" and "agencies" to "agency office" and "Agency offices," respectively.

OTS is also amending 12 CFR 550.136 to remove an incorrect reference to state law. Section 550.136 did not appear in the proposed rule, published on June 11, 2002, but was adopted in response to comments on different language that had been proposed. It was published for the first time on December 12, 2002 and became effective January 1, 2003. Since the effective date, it has come to OTS's attention that one of the parenthetical descriptions in that section is incorrect.

Specifically, in the list of state laws that apply to the fiduciary operations of federal savings associations by virtue of 12 U.S.C. 1464(n), OTS included a reference to "State laws regarding * * * investments in state trust companies." Section 1464(n), however, contains no reference to state laws regarding thrift investments in state trust companies. Accordingly, we are amending § 550.136(a) to remove the reference to state laws regarding investments in state trust companies.

II. Need for an Immediately Effective Final Rule

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[3] OTS believes that following those procedures in today's rulemaking would be unnecessary and contrary to public interest because the rule achieves regulatory consistency, minimizes potential confusion, and reduces regulatory burden. There is no reason to delay these results. Under the clarified rule, a federal savings association that wants to establish an agency office to conduct previously approved fiduciary activities, or activities ancillary to the association's fiduciary business, must follow only the procedures in 12 CFR part 550. The amendment to § 550.136 merely conforms the regulatory provisions to the parallel statutory provisions. These changes will not detrimentally affect savings associations or others.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[4] This section does not apply because this final rule imposes no additional requirements and results in consistency between existing regulations.

III. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a notice of proposed rulemaking.[5] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS Director certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

V. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Savings associations, Trusts and trustees.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 545—[AMENDED]

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

■ 2. Amend § 545.96, including the section heading, as follows:

■ a. Remove the words "agency" and "agencies" and add, in their place, the words "agency office" and "agency offices," respectively.

■ b. Revise paragraph (a) of § 545.96 as follows:

[2] Section 550.125 requires that the notice identify the new state, describe the fiduciary activities that the association will conduct in that state, and provide sufficient information supporting a conclusion that the activities are permissible in that state.

[3] 5 U.S.C. 553.

[4] Pub. L. 103–325, 12 U.S.C. 4802.

[5] 5 U.S.C. 603.

§ 545.96 Agency office.

(a) *General.* A Federal savings association may establish or maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the Federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with subpart A of part 550 of this chapter.

* * * * *

PART 550—[AMENDED]

■ 3. Amend § 550.136(a) by revising the third sentence to read as follows:

§ 550.136 To what extent do State laws apply to my fiduciary operations?

* * *Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section.

* * * * *

Dated: September 2, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22778 Filed 9–8–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM263, Special Conditions No. 25–245–SC]

Special Conditions: Sabreliner Model NA–265 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sabreliner Model NA–265 series airplanes, modified by Sabreliner Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Air Data systems that perform critical functions by providing altitude, airspeed, or other critical data. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 28, 2003. Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM263, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM263.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 21, 2003, Sabreliner Corporation, Pierre Laclede Center, 7733 Forsyth Boulevard, Suite 1500, St. Louis, Missouri 63105–1821, applied for a supplemental type certificate (STC) to modify Sabreliner Model NA–265 series airplanes. These airplanes are approved under Type Certificate No. A2WE. The Model NA–265 series are small transport category airplanes powered by two aft-mounted Pratt and Whitney Turbo Wasp JT12A engines, with the exception of the Model NA–265–65, which has two Air Research TFE731 turbofan engines, and the Model NA–265–80, which has two GE Model CF700 turbofan engines. These airplanes operate with a 2-pilot crew and can hold from 4 to 10 passengers depending on the model within the series. The NA–265 series have a maximum takeoff weight of 17,450 to 24,000 pounds, depending on the brake installation and model within the series.

The modification incorporates the installation of Air Data systems (combinations of Air Data Display Units, Air Computer, Air Data Sensor, and/or Altimeter) that perform critical functions by providing altitude, airspeed, or other critical data. These systems use electronics to a far greater extent than the original instrument systems, and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). The disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Sabreliner Corporation must

show that the Model NA–265 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Sabreliner NA–265 series airplanes includes Civil Air Regulation (CAR) 4b, dated December 31, 1953, as amended by Amendments 4b–1 through 4b–9. In addition, under § 21.101(b)(1), Amendment 25–69, the following sections of 14 CFR part 25 apply to the air data, altimeter, and display systems installed on the Sabreliner NA–265 series airplanes: §§ 25.1309(a), (c), (e), (f), and (g), 25.1321(a), (b), (d), and (e), 25.1331, and 25.1335 as amended by Amendment 25–41; and § 25.1316, as amended by Amendment 25–80. The certification basis also includes other amendments and special conditions, as noted in Type Certificate Data Sheet (TCDS) No. A2WE, that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (that is, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Sabreliner Model NA–265 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sabreliner Model NA–265 series airplanes must comply with the fuel vent and exhaust emission requirement of SFAR 27 (now codified as 14 CFR part 34) and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Sabreliner Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Sabreliner Model NA–265 series airplanes modified by Sabreliner Corporation will incorporate the installation of Air Data systems that perform critical functions. Because these advanced systems use electronics to a far greater extent than the original altimetry system, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model NA–265 series airplanes, modified by Sabreliner to include the new Air Data systems. These special conditions require that the Air Data systems, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Sabreliner Model NA–265 series airplanes modified by Sabreliner. Should Sabreliner Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Sabreliner

Model NA–265 series airplanes modified by Sabreliner Corporation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Sabreliner Model NA–265 series airplanes modified by Sabreliner Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22798 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM264, Special Conditions No. 25–246–SC]

Special Conditions: Gulfstream Aerospace LP 1125 Westwind Astra; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Aerospace LP 1125 Westwind Astra airplanes modified by Garrett Aviation Services. These modified airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the upgrade of one Air Data Computer system and the installation of a second Air Data Computer system, both of which perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 28, 2003. Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM264, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM264.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment close date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 2, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes approved under Type Certificate No. A16NM. The Model 1125 Westwind Astra is a small transport category airplane, powered by two Turbofan Engines; the airplane has a maximum takeoff weight of 24,800 pounds. The Model 1125 Westwind Astra operates with a 2-pilot crew and holds up to 9 passengers. The modification incorporates the upgrade

of the single Rockwell Collins ADS–85 Air Data System and the installation of an Innovative Solutions & Support Air Data Display Unit and a 2-inch Standby Altimeter. These avionics/ electronics and electrical systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Model 1125 Westwind Astra airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Model 1125 Westwind Astra airplanes includes 14 CFR part 25, dated February 1, 1965, through Amendment 25–54, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A16NM.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Aerospace LP 1125 Westwind Astra airplanes modified by Garrett Aviation Services must comply with the fuel vent and exhaust requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model.

Novel or Unusual Design Features

As noted earlier, the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services will incorporate the upgrade of the single Rockwell Collins ADS–85 Air Data System and the installation of an Innovative Solutions & Support Air Data Display Unit and a 2-inch Standby Altimeter that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual designs.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/ electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200

Frequency	Field strength (volts per meter)	
	Peak	Average
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

NOTE.—The field strengths are expressed in terms of peak of the root-mean-square (rms) values over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificate No. A16NM to incorporate the same or similar novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplanes.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22797 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–29–AD; Amendment 39–13300; AD 2003–18–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD requires removal from service of certain part numbers of high pressure (HP) compressor rotor shafts, based on a newly established reduced life limit. This AD is prompted by reports of HP compressor drums with small cracks in blade loading slots found at overhaul inspection. The HP compressor drums are an integral part of the HP compressor rotor shaft. We are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane.

DATES: Effective September 24, 2003.

We must receive any comments on this AD by November 10, 2003.

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

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority, (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. The CAA advises that it has received overhaul inspection reports of HP compressor drums with small cracks in blade loading slots. The HP compressor drums are an integral part of the HP compressor rotor shaft. The manufacturer is currently analyzing parts from the field, and has not yet

determined the root cause of the cracking or established a full understanding of the crack propagation rate. Through coordination with the CAA, the manufacturer has reduced the declared lives of the affected HP compressor rotor shafts to 4,200 cycles-since-new (CSN). The FAA has confirmed through the CAA that there are no affected in-service parts close to accumulating 4,200 CSN. The manufacturer may introduce a design change to increase the declared lives of HP compressor rotor shafts in the future.

FAA's Determination and Requirements of This AD

Although none of these affected engine models are used on any airplanes registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design, we are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane. The HP compressor drums are an integral part of the HP compressor rotor shaft. This AD requires removal from service of certain part numbers of HP compressor rotor shafts, based on a newly established reduced life limit of 4,200 CSN.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K., and is type certificated for operation in the United States under section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we can adopt this regulation immediately.

Changes to 14 CFR Part 39—Effect on the AD

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–29–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Examining the AD Docket

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–29–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–18–09 Rolls-Royce plc: Amendment 39–13300. Docket No. 2003–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 24, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to Airbus A330 series airplanes.

Unsafe Condition

(d) This AD is prompted by reports of high pressure (HP) compressor drums with small cracks in blade loading slots found at overhaul inspection. We are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance cycles specified unless the actions have already been done.

(f) Remove HP compressor rotor shafts, part numbers (P/Ns) FK24031 (pre RR Service Bulletin (SB) RB.211–72–B172), FK22745 (SB RB.211–72–B172), FK23313 (SB RB.211–72–B261 and pre SB RB.211–72–B653), FK25502 (SB RB.211–72–B653), FK26185 (SB RB.211–72–B921), FK32129 (SB RB.211–72–C746), FW20195 (SB RB.211–72–D533), FW20196 (SB RB.211–72–D533), FW20197 (SB RB.211–72–D533), and FW20638 (SB RB.211–72–D533) from service at or before accumulating 4,200 cycles-since-new (CSN).

(g) After the effective date of this AD, do not install any HP compressor rotor shaft, P/Ns FK24031 (pre RR SB RB.211–72–B172), FK22745 (SB RB.211–72–B172), FK23313 (SB RB.211–72–B261 and pre SB RB.211–72–B653), FK25502 (SB RB.211–72–B653), FK26185 (SB RB.211–72–B921), FK32129 (SB RB.211–72–C746), FW20195 (SB RB.211–72–D533), FW20196 (SB RB.211–72–D533), FW20197 (SB RB.211–72–D533), or FW20638 (SB RB.211–72–D533), that exceeds 4,200 CSN.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) None.

Related Information

(j) CAA airworthiness directive 003–12–2001, dated February 26, 2002, and Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–D586, Revision 1, dated February 26, 2002, also address the subject of this AD.

Issued in Burlington, Massachusetts, on September 3, 2003.

Marc J. Bouthillier,

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

[FR Doc. 03–22888 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–88–AD; Amendment 39–13189; AD 2003–12–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2003–12–04, which was published in the **Federal Register** on June 12, 2003 (68 FR 35157). The typographical error resulted in an incorrect part number for the replacement supports for the engine bleed air duct. This AD is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires replacing the four GAMAH clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies; for certain airplanes, this AD also requires replacing the two supports for the engine bleed air duct with two new supports.

DATES: Effective July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2003–12–04, amendment 39–13189, applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** on June 12, 2003 (68 FR 35157). That AD requires replacing the four GAMAH clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies; for certain airplanes, that AD also requires replacing the two supports for the engine bleed air duct with two new supports.

As published, paragraph (a)(2) of the AD cites an incorrect part number (145–35923–007) for the replacement supports for the engine bleed air duct. The correct part number is 145–35923–015.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains July 17, 2003.

§ 39.13 [Corrected]

■ On page 35158, in the second column, paragraph (a)(2) of AD 2003–12–04 is corrected to read as follows:

* * * * *

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of the service bulletin: Replace the two supports for the engine bleed air duct with two new supports having part number 145–35923–015.

* * * * *

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22889 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15409; Airspace Docket No. 03–ASO–8]

Amendment of Class D and E Airspace; Montgomery, AL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–15409; 03–ASO–8), which was published in the **Federal Register** on August 20, 2003, (68 FR 50068), amending Class D, E2, and E5 airspace at Montgomery, AL. This action corrects an error in the legal description for the Class E5 airspace at Montgomery, AL.

EFFECTIVE DATE: Effective 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–21323, Docket No. FAA–2003–15409; Airspace Docket 03–ASO–8, published on August 20, 2003, (68 FR 50068), amends Class D, E2 and E5 airspace at Montgomery, AL. An error was discovered in the legal description, describing the Class E5 airspace area. The airspace description contained incorrect geographic position coordinates for Maxwell AFB. This action corrects the error.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1 The Class E designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which incorrectly identifies the

geographical position coordinates for Maxwell AFB. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Montgomery, AL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on August 20, 2003, (68 FR 50068) is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR Part 71, by making the following correcting amendment:

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

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

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

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Montgomery, AL [Corrected]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″ N., long. 86°23′38″ W.)
Montgomery VORTAC
(Lat. 32°13′20″ N., long. 86°19′11″ W.)
Maxwell AFB
(Lat. 32°22′45″ N., long. 86°21′45″ W.)
Autauga County Airport
(Lat. 32°26′20″ N., long. 86°30′38″ W.)
Wetumpka Municipal Airport
(Lat. 32°31′46″ N., long. 86°19′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Montgomery Regional Airport-Dannelly Field, and within 4 miles east and 8 miles west of the Montgomery VORTAC 138° radial extending from the 7-mile radius to 16 miles southeast of the Montgomery VORTAC, and within a 7-mile radius of Maxwell AFC and within a 7-mile radius of Autauga County Airport and within a 6.3-mile radius of Wetumpka Municipal Airport.

* * * * *

Issued in College Park, Georgia on August 28, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–22799 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15453; Airspace Docket No. 03–ACE–51]

Modification of Class E Airspace; Elkhart, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Elkhart, KS.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 9, 2003 (68 FR 40762). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22804 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15456; Airspace Docket No. 03–ACE–54]

Modification of Class E Airspace; Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Vinton, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41694). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22803 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15454; Airspace Docket No. 03–ACE–52]

Modification of Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Wichita Mid-Continent Airport, KS.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41691). The FAA subsequently published a correction to this direct final rule, revising the Wichita McConnell Air Force Base airport reference point, on August 21, 2003 (68 FR 50468). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22802 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15455; Airspace Docket No. 03–ACE–53]

Modification of Class E Airspace; Sioux Center, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Sioux Center, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41692). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22801 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15461; Airspace Docket No. 03–ACE–59]

Modification of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Thursday, July 31, 2003, (68 FR 44875) [FR Doc. 03–19408]. It corrects an error in an extension to the Beatrice, NE Class E airspace area and its legal description.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–19408, published on Thursday, July 31, 2003, (68 FR 44875) modified Class E airspace at Beatrice, NE. The modification was to correct discrepancies in the legal description of the airspace area, to expand and redefine its dimensions in order to provide appropriate protection for aircraft executing Instrument Approach Procedures to Beatrice Municipal Airport and to bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the dimensions of the southern extension of this airspace area were published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Beatrice, NE Class E airspace, as published in the **Federal Register** on Thursday, July 31, 2003, (68 FR 44875), [FR Doc. 03–19408] is corrected as follows:

§ 71.1 [Corrected]

■ On page 44876, Column 3, first paragraph headed, last line, change "to 7 miles south of Shaw NDB" to read "to 9.4 miles south of Shaw NDB."

Issued in Kanasa City, MO, on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22800 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14855; Airspace Docket No. 03–AAL–04]

Amendment to Class E Airspace; Pilot Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airport coordinates in the final rule for the Pilot Point Airport that were published in the **Federal Register** on August 11, 2003 (68 FR 47449), Docket No. FAA–2003–14855; Airspace Docket 03–AAL–04.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.ctr.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–20404, Docket No. FAA–2003–14855; Airspace Docket 03–AAL–4, published on August 11, 2003 (68 FR 47449) established new Class E airspace area at Pilot Point, AK. The coordinates for the Airport Reference Point were wrong. This action corrects the Airport Reference Point for the Pilot Point Airport, Pilot Point, AK.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace description listed for the Pilot Point Airport as published in the **Federal Register** on August 11, 2003, (68 FR 47449), (**Federal Register** Document 03–20404, page 47449), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Pilot Point, AK [Corrected]

Pilot Point Airport, AK

(Lat. 57° 34′ 49″ N., long. 157° 34′ 19″ W.)

* * * * *

Issued in Anchorage, AK, on August 29, 2003.

Judith G. Heckl,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–22922 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30385; Amdt. No. 3073]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 9, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 2003.

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

For Examination—

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

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

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

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

*For Purchase—*Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 29, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective October 30, 2003

Ambler, AK, Ambler, RNAV (GPS) Y RWY 36, Orig
Ambler, AK, Ambler, RNAV (GPS) Z RWY 36, Orig
Ambler, AK, Ambler, RNAV (GPS) RWY 36, Orig, CANCELLED
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6L, Orig-B
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6R, Orig-B
Bethel, AK, Bethel, RNAV (GPS) RWY 18, Orig-C
Bethel, AK, Bethel, RNAV (GPS) RWY 36, Orig-C
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 1L, Orig-B
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 19R, Orig-B
Igiugig, AK, Igiugig, RNAV (GPS) RWY 5, Orig
Igiugig, AK, Igiugig, RNAV (GPS) RWY 23, Orig
Iliamna, AK, Iliamna, RNAV (GPS) RWY 7, Amdt 1
Juneau, AK, Juneau Intl, RNAV (GPS) V RWY 8, Orig
Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS)—A, Orig
Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS) RWY 7, Orig
Bakersfield, CA, Meadows Field, ILS OR LOC RWY 30R, Amdt 28
Bakersfield, CA, Meadows Field, NDB RWY 30R, Amdt 7
Bakersfield, CA, Meadows Field, VOR RWY 30R, Amdt 8
Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 30R, Orig
Bakersfield, CA, Meadows Field, GPS RWY 30R, Orig-B, CANCELLED
Napa, CA, Napa County, VOR RWY 6, Amdt 12
Napa, CA, Napa County, RNAV (GPS) RWY 6, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, ILS RWY 17L, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 17L, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 17R, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 30, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 35R, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, NDB RWY 35L, Amdt 25B
Colorado Springs, CO, City Of Colorado Springs Muni, GPS RWY 17L, Orig, CANCELLED
Colorado Springs, CO, City Of Colorado Springs Muni, GPS RWY 35R, Orig, CANCELLED
Tinian Island, CQ, West Tinian, RNAV (GPS) RWY 8, Orig
Tinian Island, CQ, West Tinian, RNAV (GPS) RWY 26, Orig
Tinian Island, North Mariana Island, CQ, West Tinian, GPS RWY 8, Orig, CANCELLED
Tinian Island, North Mariana Island, CQ, West Tinian, GPS RWY 26, Orig-A, CANCELLED
Marco Island, FL, Marco Island, LOC RWY 17, Orig-A, CANCELLED
Kosrae Island, FM, Kosrae, RNAV (GPS) RWY 5, Orig
Kosrae Island, FM, Kosrae, GPS RWY 23, Amdt 1, CANCELLED
Kosrae Island, FM, Kosrae, GPS RWY 5, Amdt 1, CANCELLED
Kosrae Island, FM, Kosrae, RNAV (GPS) RWY 23, Orig
Pohnpei Island, FM, Pohnpei Intl, RNAV (GPS) RWY 9, Orig
Pohnpei Island, FM, Pohnpei Intl, RNAV (GPS) RWY 27, Orig
Pohnpei Island, FM, Pohnpei Intl, GPS RWY 9, Amdt 1, CANCELLED
Pohnpei Island, FM, Pohnpei Intl, GPS RWY 27, Amdt 1, CANCELLED
Yap Island, FM, Yap Island Intl, RNAV (GPS) RWY 7, Orig
Yap Island, FM, Yap Island Intl, RNAV (GPS) RWY 25, Orig
Yap Island, FM, Yap Island Intl, GPS RWY 7, Amdt 1, CANCELLED
Yap Island, FM, Yap Island Intl, GPS RWY 25, Amdt 1, CANCELLED
Chicago, IL, Merill C. Meigs, VOR/DME–A, Orig, CANCELLED
Chicago, IL, Merill C. Meigs, GPS RWY 36, Amdt 1A, CANCELLED
Eureka, KS, Eureka Muni, RNAV (GPS) RWY 18, Orig
Eureka, KS, Eureka Muni, VOR/DME RWY 18, Amdt 2A
Goodland, KS, Renner Fld/Goodland Muni, ILS OR LOC/DME RWY 30, Orig
Goodland, KS, Renner Fld/Goodland Muni, ILS RWY 30, Amdt 3A, CANCELLED
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 12, Orig
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 23, Orig
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 30, Orig
Goodland, KS, Renner Fld/Goodland Muni, NDB RWY 30, Amdt 7
Goodland, KS, Renner Fld/Goodland Muni, VOR RWY 30, Amdt 8
Goodland, KS, Renner Fld/Goodland Muni, VOR/DME RWY 30, Amdt 7
Wichita, KS, Cessna Aircraft Field, RNAV (GPS)–D, Orig
Wichita, KS, Cessna Aircraft Field, VOR–C, Amdt 1
Augusta, ME, Augusta State, GPS RWY 35, ORIG–A
Majuro Atoll, MH, Marshall Islands Intl, RNAV (GPS) RWY 7, Orig

Majuro Atoll, MH, Marshall Islands Intl, RNAV (GPS) RWY 25, Orig
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 7, Amdt 1, CANCELLED
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 25, Amdt 1, CANCELLED
Holland, MI, Tulip City, VOR–A, Amdt 10C
Holland, MI, Tulip City, VOR/DME RNAV RWY 8, Amdt 2B
Holland, MI, Tulip City, ILS OR LOC/DME RWY 26, Orig
Holland, MI, Tulip City, ILS/DME RWY 26, Orig-B, CANCELLED
Holland, MI, Tulip City, RNAV (GPS) RWY 8, Orig
Holland, MI, Tulip City, RNAV (GPS) RWY 26, Amdt 1
Canby, MN, Myers Field, RNAV (GPS) RWY 11, Orig
Menominee, MI, Menominee-Marinette Twin County, RNAV (GPS) RWY 32, Orig
Menominee, MI, Menominee-Marinette Twin County, GPS RWY 32, Orig, CANCELLED
Hatteras, NC, Billy Mitchell, RNAV (GPS) RWY 25, Orig
Hatteras, NC, Billy Mitchell, GPS RWY 25, Amdt 2, CANCELLED
Montgomery, NY, Orange County, ILS RWY 3, Amdt 2
Wooster, OH, Wayne County, NDB RWY 28, Amdt 7C, CANCELLED
Towanda, PA, Bradford County, RNAV (GPS) RWY 23, Orig
Towanda, PA, Bradford County, GPS RWY 23, Orig, CANCELLED
Pierre, SD, Pierre Regional, ILS OR LOC RWY 31, Amdt 11A
Gallatin, TN, Sumner County Regional, RNAV (GPS) RWY 17, Orig
Gallatin, TN, Sumner County Regional, RNAV (GPS) RWY 35, Orig
Gallatin, TN, Sumner County Regional, VOR/DME–A, Amdt 2
Gallatin, TN, Sumner County Regional, GPS RWY 17, Orig, CANCELLED
Gallatin, TN, Sumner County Regional, GPS RWY 35, Orig, CANCELLED
Brownsville, TX, Brownsville/South Padre Island Intl, NDB RWY 13, Amdt 14
Brownsville, TX, Brownsville/South Padre Island Intl, ILS OR LOC RWY 13R, Orig
Brownsville, TX, Brownsville/South Padre Island Intl, ILS RWY 13R, Amdt 11B, CANCELLED
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV (GPS) RWY 13R, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 17L, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 17R, Orig
Harlingen, TX, Valley Intl, VOR/DME OR TACAN Y RWY 31, Amdt 1
Harlingen, TX, Valley Intl, VOR/DME Z RWY 31, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 35L, Orig
Harlingen, TX, Valley Intl, NDB RWY 17L, Amdt 7
Harlingen, TX, Valley Intl, NDB RWY 17R, Amdt 13
Harlingen, TX, Valley Intl, ILS OR LOC RWY 17R, Orig
Harlingen, TX, Valley Intl, ILS RWY 17R, Amdt 12, CANCELLED
Harlingen, TX, Valley Intl, LOC/DME BC RWY 35L, Orig
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 13, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17L, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17R, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 31, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 35L, Amdt 1
Port Isabel, TX, Port Isabel-Cameron County, VOR/DME–B, Amdt 3
Port Isabel, TX, Port Isabel-Cameron County, VOR–A, Amdt 6
Port Isabel, TX, Port Isabel-Cameron County, RNAV (GPS) RWY 13, Orig
Port Isabel, TX, Port Isabel-Cameron County, GPS RWY 13, Orig-A, CANCELLED
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) RWY 21, Orig
Charlottesville, VA, Charlottesville-Albemarle, GPS RWY 21, Orig, CANCELLED
Huntington, UT, Huntington Muni, RNAV (GPS)–C, Orig
Huntington, UT, Huntington Muni, VOR/DME–B, Amdt 1
Chetek, WI, Chetek Muni-Southworth, RNAV (GPS) RWY 17, Orig
Chetek, WI, Chetek Muni-Southworth, RNAV (GPS) RWY 35, Orig
Chetek, WI, Chetek Muni-Southworth, GPS RWY 35, Orig, CANCELLED
Manitowoc, WI, Manitowoc County, VOR RWY 17, Amdt 15
Manitowoc, WI, Manitowoc County, VOR/DME RWY 35, Orig
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 35, Amdt 14, CANCELLED
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 17, Orig
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 35, Orig
Afton, WY, Afton Muni, RNAV (GPS) RWY 16, Orig
Afton, WY, Afton Muni, RNAV (GPS) RWY 34, Orig

[FR Doc. 03–22796 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

RIN 1219 AB33

Emergency Evacuations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing a final rule for underground coal mines in response to dangers to which miners are exposed during mine fire, explosion, and gas or water inundation emergencies. This final rule establishes two new standards concerning *Emergency Evacuations* and *Mine Emergency Evacuation and Firefighting Program of Instruction*. In addition, existing part 48, subpart A, § 48.8 is amended.

On December 12, 2002, MSHA published an emergency temporary standard (ETS) which required operators of underground coal mines to designate for each shift that miners are underground, a responsible person to take charge during mine fire, explosion and gas or water inundation emergencies. In addition, the ETS required the responsible person to conduct an immediate mine evacuation when there is a mine emergency that presents an imminent danger to miners due to fire, explosion or gas or water inundation. The ETS also broadened the existing requirements for a program of instruction for firefighting and evacuation to address fire, explosion, and gas or water inundation emergencies. Finally, the ETS revised the part 48 training requirements to reflect that annual refresher training includes a review of the mine fire, explosion, and gas or water inundation emergency evacuation and firefighting plans in effect at the mine. In accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act), the ETS must be replaced by final standards no later than 9 months after publication of the ETS. This final rule supercedes the ETS.

DATES: This final rule is effective September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued in accordance with sections 101(b) and 115 (30 U.S.C. 811, 825), of the Federal Mine Safety and Health Act of 1977 (Mine Act). An Emergency Temporary Standard (ETS) was promulgated December 12, 2002 (67 FR 76658). The ETS was effective immediately upon publication. The ETS established two new standards in subpart P; § 75.1501, *Emergency Evacuations*, and § 75.1502, *Mine Emergency Evacuation and Firefighting Program of Instruction*. Subpart P was renamed "Subpart P—Mine Emergencies." In addition, existing part 48, subpart A, § 48.8 was revised.

In accordance with section 101(b)(3) of the Mine Act, the ETS also served as a proposed rule. The preamble to the proposed rule discussed specific provisions and MSHA solicited comments on those provisions. You can view comments filed in response to the

rulemaking at *http://www.msha.gov/currentcomments.htm*.

Section 75.1501 requires an operator to designate a responsible person to take charge when a mine emergency involving a fire, explosion, or gas or water inundation presents an imminent danger to miners. Section 75.1501 also requires that miners receive instruction on the identity of the responsible person designated by the operator for their workshift.

Section 75.1101–23 was redesignated as § 75.1502 and revised to include all mine emergencies resulting from a fire, an explosion, or a gas or water inundation (67 FR 76658, Dec. 12, 2002). This final rule §75.1502 requires that firefighting and evacuation plans address these emergencies; that miners be trained in all elements of the mine emergency evacuation and firefighting plan; and that mine operators instruct miners regarding any revisions to the plan after its submission to MSHA for approval.

Section 48.8, paragraph (b)(4), is amended to include in the annual refresher training of miners, a review of the emergency evacuation and firefighting plans in effect at the mine.

MSHA held four public hearings on the proposed rule in Lexington, Kentucky on February 4, 2003; Grand Junction, Colorado on February 6, 2003; Charleston, West Virginia on February 11, 2003; and Pittsburgh, Pennsylvania on February 13, 2003. The comment period closed on February 28, 2003. This final rule addresses all of the relevant comments received on the proposed rule.

Waiver of Delayed Effective Date

In accordance with the requirements of § 553(d) of the Administrative Procedure Act (5 U.S.C. 553), MSHA publishes a final rule in the **Federal Register** at least 30 days before its effective date. However, § 553(d)(3) of the Administrative Procedure Act permits an agency to dispense with this requirement when the agency has found that there is good cause to do so, and it publishes its finding in the **Federal Register** with the final rule. As explained below, MSHA finds that good cause exists to make this final rule effective upon its publication today in the **Federal Register**.

One of the primary purposes of the delayed effective date requirement is to provide affected persons or industries with adequate time to prepare for compliance with the rule. MSHA's final rule on Emergency Evacuations published in today's **Federal Register** is very similar in all major respects to the ETS, which has been in effect since December 12, 2002, and underground coal mine operators have been complying with the ETS during those eight months. Therefore, MSHA finds that no additional time is necessary for underground coal mine operators to come into compliance with the requirements of this rule because the underground coal mine industry is already familiar with the major provisions of the final rule.

In addition, the agency's ETS on Emergency Evacuations will expire on September 12, 2003. The expiration of the ETS would leave a critical void in miners' safety if the final rule is not effective by that date. For these reasons, MSHA finds good cause to waive the requirement for a delayed effective date, thereby allowing the final rule to be effective today, upon publication in the **Federal Register**.

I. Discussion of the Final Rule

A. Background

During the past three years, at least 14 miners have died in two accidents as a result of faulty mine evacuations. Explosions at the Jim Walter Resources, Inc. No. 5 Mine in Alabama on September 23, 2001, resulted in 13 fatalities. An initial roof fall and explosion occurred at 5:20 p.m. and resulted in injuries to four miners. One of the four miners was severely injured and could not move. Miners from other parts of the mine responded in an ill-coordinated effort. The response was marked by confusion. For example, after the Carbon Monoxide (CO) Room operator (monitoring the CO monitoring system at the mine) was notified of the explosion, he attempted to locate the afternoon shift haulage foreman who he believed was working at the mine. This foreman was not working that shift. There was also some confusion about where the first explosion occurred.

By the time the second explosion occurred at 6:15 p.m., 12 additional miners traveled towards the initial explosion site and these miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area, but the 6:15 p.m. explosion occurred before they arrived in the area of the initial explosion. It is uncertain whether the miner immobilized by the first explosion died as a result of the first or second explosion. It is certain, however, that 12 additional miners died from the second explosion as they were attempting to reach the injured miner.

MSHA's accident investigation team determined that, in addition to not following proper evacuation procedures after the initial explosion, there was never a mine wide evacuation initiated at the mine, even after an explosion damaged critical ventilation controls. MSHA's accident investigation team determined that gas detection equipment was not found on any of the fatally injured miners nor did the accident investigation find such equipment in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and to secure the safety of those entering unknown atmospheres, especially when ventilation controls are damaged. MSHA's accident investigation report concluded that the lack of training and the failure to conduct fire and emergency drills relative to proper evacuation procedures "affected the miners' response" to the emergency situation of September 2001.

While one commenter to the proposed rule stated that the Jim Walter accident was an "aberrational situation," MSHA notes that every mine accident is unique and may present different facts and circumstances. MSHA has carefully reviewed this accident, and believes that the final rule is appropriately proactive in developing a systematic procedure for responding to mine emergencies. MSHA has determined that had a responsible person knowledgeable about the mine safety systems taken charge of the evacuation and rescue effort, fewer miners would have been permitted to remain underground or re-enter the affected mine area during the mine emergency.

Under this rule, all miners underground who were not essential to providing a mine emergency response to the explosion would have immediately evacuated the mine. In addition, the responsible person could have assured that the miners attempting a rescue were equipped with gas detection equipment. Moreover, miners would have understood, from mine emergency evacuation and firefighting training, that an evacuation was necessary and that they should not re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine in Utah. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions that killed two miners. One commenter to the proposed rule noted that it was inappropriate to use the Willow Creek accident to justify the ETS because the commenter believed the mine responded appropriately and evacuated expeditiously. After careful review of the accident, MSHA has concluded that the fatalities may have

been prevented. Although firefighting activities began almost immediately after the first explosion, section evacuation procedures did not begin immediately and conditions worsened before the fatal explosions occurred. Had the decision to evacuate been made sooner, after it became evident that the fire was not controllable, and had the individuals present at the affected mine section been more aware of the urgent need for evacuation under emergency conditions, the fatalities might not have occurred. Some miners present at the mine were equipped with personal emergency devices (PEDs) which are capable of communicating text messages to underground personnel. Many miners had evacuated the mine and these devices alerted the remaining miners to evacuate the mine. The message to evacuate, however, was not transmitted until after the third of four explosions occurred. Had a responsible person been in attendance at the mine to take charge during the mine emergency, that person could have made a decision to initiate and conduct a mine evacuation sooner.

Mine emergencies that trigger the need to evacuate include inundations. There have been two water inundations and one gas inundation where miners have died. In 1968, Saxsewell No. 8 Mine in Hominy Falls, West Virginia, experienced an inundation of water when a continuous miner cut through into the workings of an abandoned mine. There were 26 men in the mine at the time of the occurrence. One man escaped from the mine unassisted, but the others were trapped in the mine. Fifteen miners were rescued five days later and six others were rescued 10 days after the inundation occurred. Four men were fatally injured. In 1977. in Tower City, Pennsylvania, at Porter Tunnel, an inundation of water entered the mine through a breach in the mine floor at the low side rib in the gangway. The water had accumulated in the unmapped abandoned workings and broke through the floor of the advancing gangway. The inundation caused the death of nine miners, injuries to three and entrapment of one who was eventually rescued. Six miners in the affected section escaped safely through the return air emergency escapeway leading to the surface. The miners in the other sections, 65 in all, traveled both the intake and return air escapeways leading to the surface.

In 1978 at Moss 3 Mine in Duty, Virginia, water inundated some abandoned sections in the mine soon after work began on a 265 foot single-entry drainway to connect an abandoned area of the mine to the surface. On April 4, 1978, four men were working to advance the drainway into an abandoned mined-out area. Although the air in the abandoned area was not tested after a test borehole penetrated the area, the continuous miner was used to penetrate into the abandoned area. Immediately after breaching into the abandoned area, the drainway was inundated with blackdamp (oxygen-deficient air). Two of the four miners who were advancing the drainway successfully retreated to the surface. The other two miners perished. The blackdamp also killed three other miners who went underground without protective equipment to search for the missing men. Similarly unequipped during rescue attempts, two other men were also overcome with blackdamp, but were successfully assisted to the surface.

A commenter asked that MSHA consider certain mine accidents that occurred during the last two years to determine whether there were deficiencies in the mine operator's emergency response. The commenter specifically asked MSHA to consider: the July 24, 2002 water inundation at Quecreek No. 1 Mine in Pennsylvania; the April 17, 2002 fire at the Blue Diamond mine in Kentucky; the September 16, 2002 fire at the Fairfax mine in West Virginia; the January 6, 2003 fire at the Mine 84 in Pennsylvania; the January 22, 2003 explosion at the McElroy mine shaft involving Central Cambria Drilling in West Virginia; and the February 13, 2003 fire at the Loveridge mine in West Virginia. Because there is no final MSHA accident report for Blue Diamond mine, McElroy mine, and Loveridge mine, MSHA has not drawn a conclusion as to the mine operator's emergency response in relation to this final rule. MSHA addresses the Quecreek accident in the section-by-section discussion of § 75.1501(d).

The Fairfax mine fire occurred on September 16, 2002, before promulgation of the ETS. In its August 20, 2003 accident investigation report of the Fairfax mine fire, MSHA concluded in part that, "Discovery of the fire, fire-fighting, and evacuation procedures were delayed because the Fire Detection System was disabled by an electrical short circuit problem, which prevented the system from sounding an audible fire alarm. The fire continued to intensify before it was discovered because the short circuit problem in the Fire Detection System was not rapidly evaluated and because the automatic Fire Suppression System was not properly installed."

MSHA issued a final accident investigation report for the fire at Mine 84 on April 9, 2003. The accident occurred after the ETS was promulgated and the requirements of the ETS were in effect. The following gives a brief description of the Mine 84 accident. On January 6, 2003, a fire occurred in the longwall section conveyor belt entry. At about 8:27 a.m., the carbon monoxide monitoring system gave a warning indicating elevated concentrations of carbon monoxide along the beltline. The warning was investigated and dense smoke was encountered in the belt entry. Underground personnel were eventually evacuated from the mine except for those needed to conduct fire-fighting activities. Eventually mine rescue teams took over fire-fighting activities and then worked continuously until they were able to contain and extinguish the fire by January 27, 2003. MSHA issued a 104(d)(1) order for a violation of 30 CFR 75.1502(a). MSHA determined that the operator's approved program of instruction for firefighting equipment and evacuation procedures was not followed due to management's failure to immediately withdraw the 1–B longwall crew to a safe location outby the sensor activating the alarm.

Several commenters objected to the ETS. They questioned the foundation of the emergency temporary standard, objected that the comment period spanned a traditional holiday, perhaps discouraging commenters from commenting, and recommended that the standard be revoked.

The rationale for issuing the ETS was thoroughly discussed in the December 12, 2002 **Federal Register** notice (67 FR 76658). The Agency continues to believe that the ETS was urgently needed and properly promulgated in accordance with the Mine Act. The fact that mine disasters are somewhat infrequent does not preclude the need to address the serious underlying issue of how to respond to the dangers to which miners are exposed during mine fire, explosion, and gas or water inundation emergencies. It should be noted that the post-hearing comment period was open until February 28, 2003, which MSHA believes was adequate time to submit comments, even considering that the comment period included a holiday. Although the ETS was in effect, it operated by law as a proposed rule, and allowed for comments by all interested parties. No party asked for a stay of the ETS, and the ETS has remained in effect since its publication on December 12, 2002.

One commenter asked that MSHA determine the goal of the rule. The commenter asked whether it was to

ensure the fastest and safest means of evacuation, or rescue of personnel. The goal of the rule is to initiate an appropriate response to a mine emergency, and to cause an immediate evacuation of miners when necessary.

Various comments were received recommending additional standards and requirements that are outside the scope of this rulemaking. These recommendations included the following: redesign self-contained self-rescuers; require new or separate secondary communication systems; require communications on all vehicles; redesign equipment batteries; improve roof control; require additional gas detectors; expand annual retraining to exceed eight hours; deploy atmospheric monitoring systems mine-wide; limit shift length; require dedicated transportation equipment; and provide continuous communications for anyone who might respond to an emergency. These recommendations are not incorporated into the final rule because they are outside the scope of this rulemaking.

One commenter also urged that the rulemaking be expanded to include underground metal and non-metal mines. Because this rulemaking deals with underground coal mine standards, the issue is beyond the scope of the rulemaking.

As a part of the ETS and proposed rule discussion, MSHA solicited comments on whether the rule should be broadened to address outbursts, massive roof falls, or other occurrences. Both affirmative and negative comments were received. Some comments indicated that coverage was already overly broad while others envisioned a wider scope of conditions that should result in evacuation. On balance, based on the rulemaking record, the Agency concludes that the conditions incorporated by the ETS and proposed rule were appropriate and should not be broadened at this time. Comments were considered, as well as the mine accident histories available to MSHA.

B. Section-by-Section Discussion

Subpart P—Mine Emergencies

Section 75.1501 Emergency Evacuations

Section 75.1501 addresses mine emergency evacuations. Like the ETS and the proposed rule, paragraph (a) of the final rule requires that for each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundation.

Under the ETS and proposed rule, the responsible person was required to be in attendance at the mine but was not limited to an underground or surface location. The final rule adopts the proposed rule language. A number of commenters suggested that the responsible person should be required to remain on the surface. Another commenter suggested that the responsible person should be located underground. Some commenters suggested that the responsible person should receive continuous output information or data from any mine monitoring system. Another commenter maintained that two responsible persons should be required with one located on the surface and one underground.

Although it is possible that a number of persons at a mine could be qualified for designation as the responsible person, many mines have elected to designate the mine foreman as the responsible person. This is an appropriate designation because the mine foreman is often the person most knowledgeable about the mine and the one who determines where people will be traveling. In such cases, prohibiting the foreman from traveling underground could have a detrimental effect on mine safety, as noted by one commenter. Conversely, requiring the mine foreman to remain underground for the entire shift would prevent performance of essential functions that may be required on the surface. MSHA concludes that it is appropriate to allow the responsible person to be either on the surface or underground.

A number of commenters requested clarification on whether the phrase "for each shift that miners work underground" applies to shifts other than production shifts. The proposed rule required that a responsible person be designated by the mine operator, and be in attendance at the mine. This standard applies whenever there is at least one miner working underground. The final rule adopts this language from the proposed rule. As with the proposed rule, there is no exemption for idle, partially-staffed, maintenance, construction, or other non-producing shifts.

Paragraph (a) of final § 75.1501, like the proposed rule, also requires that the responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. This requirement in paragraph (a) is unchanged from the proposed rule. The purpose of this requirement is to ensure that during mine emergencies one responsible person responds by making informed decisions, and that mine evacuations are conducted rapidly, efficiently, and safely. The accidents of the recent past demonstrate the need for a responsible person to take charge during mine emergencies.

In taking charge during an emergency, the responsible person directs resources that may be required during the emergency and assures that all nonessential miners are evacuated safely. In addition, requiring that the responsible person be at the mine site during all shifts when miners are working underground assures that no delays result from off-site telephone calls.

A comment concerned the accessibility of the responsible person and the maximum length of time that the responsible person could be away from communications. Several commenters believed that continuous communication is needed, while another commenter stated that any short delay in communication is unacceptable. The final rule requires that the responsible person be able to initiate and conduct an immediate mine evacuation when necessary. This requirement would be met when the responsible person travels in working sections or within active areas of the mine because communication systems are readily available and could be used by the responsible person to carry out his or her duties. However, the need to travel in remote bleeder systems or worked-out areas where there is no communication could create a problem because the responsible person would be out of contact, unable to take charge during a mine emergency, and unable to initiate and conduct an immediate mine evacuation. In order to meet the requirements of this rule, the mine operator may need to assign another person to travel these areas, or redesignate another person who also meets the requirements of § 75.1501 as the responsible person. Miners must be informed of any such change in the identity of the responsible person.

The final rule, like the proposed rule, requires that the responsible person have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications systems, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. A

number of comments were received regarding these requirements.

Requiring that the responsible person have current knowledge of the aforementioned elements assures that informed decisions are made during a mine emergency. For example, having knowledge of the work areas and the assigned locations of miners, and their expected movement during the work shift, allows miners working in remote locations (where electronic communication may not be readily available) to be notified of an evacuation as soon as possible. The responsible person will know the mine emergency evacuation and firefighting program procedures specific to the mine so that all miners working underground can be quickly located, warned of imminent danger, and evacuated efficiently and safely. Mine operators should adopt procedures specific to the mine to assure that the responsible person can quickly locate all underground miners by knowing the assigned locations and expected movements of miners underground.

Several commenters noted that it is impossible to track each miner in a large mine where examiners, material haulage persons, maintenance personnel, and belt attendants are moving continually. Other comments indicated that the location of every miner should be known at all times. The final rule maintains the proposed language that recognized it would be virtually impossible to track every miner during the shift. By using the phrase "expected movements of miners," it is recognized that comprehensive tracking is impractical. Requiring miners to call-out their every movement would be a continuous tracking task and would unnecessarily occupy the telephone system that might be needed for safety or emergency purposes. It is reasonable, however, for the responsible person to know the assigned work locations and expected movements of miners. As maintenance personnel and material haulage personnel travel within the mine, they ordinarily will do so along main haulageways where others traveling the same haulageways can readily locate them. Similarly, although the responsible person may not know the precise location of examiners or belt attendants, knowing their assigned locations and expected movements will permit these persons to be located quickly.

Several comments were received recommending that the personal emergency device (PED) become a requirement of the final rule. A PED is a paging device that is part of a communication system that miners can wear. The system generally consists of a transmitter capable of sending communications through the rock strata that can be received by individual miners through their PEDs. This system is currently used at a number of U.S. underground coal mines and has also been deployed at mines in other countries. The PED system was used successfully in the mine evacuation process at the Willow Creek mine during the July 2000 explosion accident and during an accident in November 1998, also at Willow Creek. MSHA has not made the PED system a requirement of the final rule. MSHA believes that the PED system is generally effective and encourages its use. However, since technology is constantly changing, newer systems that may be as, or more, effective than the PED may be developed. One commenter noted that it should not be necessary to track miners equipped with a PED unit since they could be contacted regardless of their location. The Agency agrees that there is less of a burden to locate miners equipped with a PED, recognizing that they can generally be contacted. However, the responsible person must be aware of their assigned work locations and expected movements during the shift as well to assure all miners can be evacuated in an emergency.

In addition, the requirement in the proposed rule that the responsible person must have "current knowledge" about various mining systems in use at the mine resulted in a number of comments. Several commenters indicated that it would be impossible for any miner to have comprehensive knowledge of each ventilation control, precise telephone locations, and other precise details. A few commenters recommended substituting the term "general knowledge" for "current knowledge."

The final rule retains the requirement for "current knowledge." "Current knowledge" is intended to mean that the responsible person have up-to-date information regarding revisions to the escapeway routes, significant ventilation changes such as reversing air directions, adding shafts, and establishing new air splits, and other significant changes that would be important during an emergency. An extraordinary level of knowledge is not intended. A typical mine would have a number of miners able to meet the requirement perhaps including the mine foreman, assistant mine foremen, some examiners, and some section foremen. Others, such as safety department personnel, atmospheric monitoring system operators, or miners who regularly travel throughout the mine and are familiar with the approved plans, may also meet this requirement. However, clerical personnel or property guards ordinarily will not meet the requirement.

One commenter suggested that the responsible person should be required to travel underground on a regular basis in order to have "current knowledge." MSHA has not included a minimal time for required underground travel. However, MSHA expects that some underground travel will normally occur for those miners meeting the requirements for a responsible person. An exception might include an experienced mine foreman who is temporarily working on the surface due to a recent injury and also has requisite knowledge of the current underground mine environment and operations defined under § 75.1501.

Some commenters believed there was an inherent conflict between the responsible person required by proposed § 75.1501 and the responsible persons required by existing standards § 75.310, *Installation of main mine fans*, § 75.311, *Main mine fan operation*, and § 75.1600, *Communications*. The knowledge required by the responsible person to comply with § 75.1501(a) is not analogous to that required by § 75.1600 for a responsible person on the surface to answer telephone calls. Similarly, §§ 75.310 and 75.311 require a responsible person on the surface, with underground communication, to always be within sight or sound of the main mine fan alarm when miners are underground. The responsibility and level of knowledge required of these persons is less than the requirement under final § 75.1501(a). The fact that several distinct functions require responsible persons does not indicate a conflict. The responsible person defined by final paragraph (a) could meet the requirements to be the responsible person under §§ 75.310, 75.311, or 75.1600, if on the surface. However, the reverse is not necessarily true. These functions are separate and the requirements are distinct. There is no conflict.

Some commenters were unsure whether the standard would apply to mine rescue teams and mine rescue and recovery efforts, and how the standard would affect decisions of upper mine management during emergency operations. The standard is intended to facilitate the immediate evacuation of the miners at the onset of fire, explosion, and gas or water inundation mine emergencies which present an imminent danger to miners, and to initiate a response when a response is

appropriate. Once the miners have been evacuated, the standard has no further application during rescue/recovery operations, mine rescue team activities, or emergency operations being orchestrated by upper mine management. The rule would next apply when miners resume work underground, whether that be when the mine returns to normal operation, or when miners are performing underground construction or rehabilitation after the immediate mine emergency has ended.

Paragraph (b) of § 75.1501 of the final rule requires that the responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency that presents an imminent danger to miners due to fire, explosion, or gas or water inundation. The rule also requires that only properly trained and equipped persons essential to respond to the mine emergency may remain underground. This paragraph is unchanged from the proposed rule and ETS.

Several comments were received questioning whether a mine-wide evacuation is always required due to any occurrence of fire, explosion, or water or gas inundation. MSHA's final rule concludes that evacuation is required for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation. MSHA has concluded that miners can be exposed to serious danger when they remain underground or improperly re-enter affected mine areas during mine emergencies that present an imminent danger due to fire, explosion, gas or water inundation. However, not every imminent danger results in a mine-wide evacuation under this rule. Some commenters urged that the rule be reworded, believing that any underground imminent danger would trigger a full mine-wide evacuation. MSHA does not agree. An imminent danger that affects a limited area, such as a section, may result in withdrawal from the affected area, but would not necessarily be a mine emergency requiring mine-wide evacuation.

Several commenters suggested that a definition of imminent danger should be included in the rule. Section 3(j) of the Mine Act already defines an imminent danger, making further definitions unnecessary. The concept of imminent danger has existed since 1969 and is well understood by mine operators, miners, and others in the mining community. The term "imminent danger" is defined in the Mine Act, section 3(j), as "the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." This definition is well known and provides readily understandable criteria.

MSHA agrees with the commenters who stated that not every mine fire, explosion, or gas or water inundation hazard may result in a mine emergency requiring a mine-wide evacuation. For example, unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not present an imminent danger to miners and, therefore, may not constitute a mine emergency under this final rule. It is when fire, explosion, or gas or water inundations present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated. For example, a gas or water inundation of unknown potential, or an explosion that raises the question of unknown damage to critical ventilation controls or interrupted ventilation, should result in a mine-wide evacuation. However, a small-scale fire at an electrical connection, while it may be a local emergency, may not immediately be a mine emergency that presents an imminent danger to all miners underground.

One commenter questioned whether accumulations of methane at elevated concentrations would be considered a gas inundation such that a mine-wide evacuation would be required. An accumulation of methane in a working place, such as the face, or the conveyor belt haulageway, is not a gas inundation. In general, an accumulation of methane results from inadequate ventilation or airflow. A gas inundation can occur even when there is adequate ventilation or airflow and is not limited to only methane gas. Current standards, specified in § 75.323, *Actions for excessive methane*, specify actions to be taken when methane above certain levels is found in a working place or return aircourses. Similarly, a commenter questioned whether a small amount of water entering a mine might be considered an inundation. Typically, it would not. In most cases, a broken water pipe spilling into the mine, or normal mine water accumulations, would not be considered an inundation requiring an emergency evacuation. However, if water inflows blocked main aircourses or bleeder systems, a mine emergency requiring evacuation could result.

One commenter questioned whether an evacuation could ever be interrupted once started. In the case where an evacuation has commenced due to a false alarm, or the emergency comes under control very quickly, the responsible person could interrupt the evacuation.

Several commenters believed that the ETS fosters an atmosphere of "every man for himself" and that chaotic unorganized evacuations will result. Other commenters believed that the rule encourages evacuation as the first reaction to a problem. To the contrary, the rule promotes organized evacuations and controlled responses. By requiring a responsible person to take charge and by improving plans and training, MSHA believes that timely and orderly evacuations will result.

Several commenters suggested that the word "conduct" found in proposed § 75.1501(b) should be deleted from the phrase "the responsible person shall initiate and conduct an immediate mine evacuation. * * *" These commenters suggested that the responsible person should only be required to initiate the evacuation. Some commenters believed that the responsible person was required to make all communication contacts and perform all other duties without any assistance. The responsible person can, of course, obtain whatever assistance is needed to contact and evacuate miners safely and quickly. The final rule retains the phrase "initiate and conduct." "Conduct" is used to assure that the responsible person remains in control during the evacuation and remains responsible for assuring that the evacuation actually occurs. "Conduct" is not used to mean or imply that the responsible person is prohibited from obtaining assistance during the emergency. The responsible person should utilize any resources needed for evacuation and should obtain assistance as appropriate.

Other commenters believed that the rule prohibits any involvement of upper mine management and prohibits contact with off-site management. The final rule, like the proposed rule, is constructed to assure that an evacuation order by the responsible person would not be usurped and to clarify that concurrence or approval by off-site management is not necessary, as it could result in a needless delay. This does not, however, prohibit communication with upper management located on or off-site. Neither does the rule prohibit upper management from organizing or deploying a mine rescue team for recovery efforts. As discussed elsewhere in this preamble, the final rule is intended to address evacuation of miners where a mine emergency exists that presents an imminent danger, and an initial response—if a response is warranted. However, the rule does not

address mine rescue team deployment and mine rescue and recovery efforts in the aftermath of an emergency evacuation, as these activities could be more appropriately controlled by other mine officials, and other provisions in the Mine Act. These issues are beyond the scope of this rulemaking.

Numerous comments were received regarding the phrase contained in proposed § 75.1501(b), "properly trained and equipped." This phrase is retained in the final rule. Stated in full, the final paragraph requires that "[o]nly properly trained and equipped persons essential to respond to the mine emergency may remain underground." Some commenters thought the phrase would limit any response to mine rescue teams. Other commenters stated that waiting for mine rescue teams would allow even small fires to propagate, creating larger, unnecessary hazards. The reason for this requirement is derived from the circumstances surrounding the Jim Walter Resources No. 5 mine accident where a party of miners was believed to have entered 4 Section, where the air quality was undetermined, without gas detectors. The requirement is intended to prevent similar occurrences.

The final rule does not limit responses to mine rescue teams and does not prohibit mine emergency responses. The final rule does, however, require that persons responding to mine emergencies be equipped with appropriate equipment and trained in its use. Several commenters requested that a definition for "properly trained and equipped" be included in the rule. MSHA believes that a definition is not necessary, and could hamper flexibility on the part of mine operators to respond to rapidly changing or different emergency situations. While it is impractical to list every possible emergency scenario, the equipment required should be apparent to those directing or engaged in any response, dependent on the nature of the emergency and the particular conditions. As an example, where miners are entering an area where ventilation controls have been destroyed or the air quality is unknown, responders should be equipped with gas detectors and should know how to operate the detectors. Miners responding to fight a fire should have gas detectors as well as firefighting equipment—and should know how to use the equipment. Otherwise, the responders could be unnecessarily exposed to hazards and the equipment could have limited effect.

One commenter suggested that each miner participating in a response should be provided with equipment—such as a gas detector. Other comments suggested a clarification that only one person in a response party, probably the leader, should be required to have the needed equipment. The Agency concludes that, in the gas detector example, sufficient gas detectors should be provided so that the group can adequately monitor the atmosphere to which they are exposed. The size of the group and the extent to which they are close together or dispersed will affect the number of gas detectors needed. In general, the quantity of equipment must be at least sufficient to protect miners from the reasonably anticipated hazards.

Section 75.1501(c) of the final rule requires that the mine operator instruct all miners about the identity of the responsible person designated by the operator for their workshift. The mine operator shall inform miners before the start of their workshift if the identity of the responsible person changes. The ETS also included an implementation date that has been deleted from this final rule since it is no longer necessary. Except for the elimination of the implementation date, this paragraph of the final rule remains unchanged from the ETS and the proposed rule.

A number of comments were submitted in response to proposed paragraph (c). A typical comment was that the responsible person should be identified by title—rather than by name. It is acceptable to develop plans and procedures where the responsible person is identified by title, so long as miners know the identity of the responsible person. A mechanism must be in place to inform the miners of the identity of the responsible person for their workshift. Should an emergency occur, a miner must be able to page a specific person rather than paging for a mine foreman or some other title.

Miners can be informed of the identity of the responsible person for their workshift in a number of ways. A verbal announcement can be made before traveling underground, a prominent chalkboard at the check-in/check-out board could indicate the name of the responsible person, or other systems could be used. One commenter believed that if MSHA asked a miner to name the responsible person, an incorrect response would result in a citation. The comment indicated that the memory of a miner is outside the control of the mine operator. MSHA does not anticipate using such a quiz for citation purposes. When it becomes apparent that several miners are unaware of who is designated the responsible person or how the notification system works, the system and its effectiveness should be reviewed. The rule recognizes that in many cases, after the responsible person is designated and the miners informed, the responsible person's identity might not change for extended periods of time.

Several commenters asked how miners would be informed of any unexpected redesignation of the responsible person during the shift. To meet the requirement and objective of the rule, miners must be informed of any unexpected change in the identity of the responsible person. One way to inform the miners of the change would be to contact the underground supervisors, instructing them to inform their crews. It is understood that every miner cannot be instantly informed and that miners traveling or working in remote locations may not be immediately informed. However, reasonable efforts must be made for supervisors to inform underground miners or their work crews when an unexpected change in the responsible person occurs during the shift.

Paragraph (d) of final § 75.1501 provides that nothing in this section shall be construed to restrict the ability of other persons in the mine, in addition to the responsible person, to warn of an imminent danger that warrants evacuation. This paragraph is unchanged from the ETS and the proposed rule. This provision recognizes that there will be mine emergencies which present an imminent danger to miners due to fire, explosion, or gas or water inundation warranting a warning by someone other than the responsible person under § 75.1501(a). For example, at the Quecreek Mine inundation accident that occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling the miners in the other working section to quickly escape the mine unharmed. These actions are consistent with the approach of final paragraph (d) of § 75.1501 that recognizes that any person may warn others of an imminent danger which warrants evacuation. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued. This paragraph clarifies that obtaining approval or concurrence from the responsible person is not required when circumstances warrant.

A commenter suggested MSHA incorporate the Occupational Safety and Health Administration's (OSHA's) 29 CFR 1920.120 titled *Hazardous waste operations and emergency response* into MSHA's final rule. OSHA's rule provides for defining an Incident Command System, a chain of command,

substance specific control plans, quality control and assessment plans, and other similar structured activities. MSHA has considered this approach and believes that the approach adopted in the final rule is appropriate for the mining industry. Mine emergency and firefighting programs developed under § 75.1502 may include assigned personnel for specific tasks. Mine rescue programs have demonstrated that their use is appropriate in addressing unique mine environments.

Section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction

Final § 75.1502, *Mine emergency evacuation and firefighting program of instruction,* was derived from § 75.1101–23, *Program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills.* The program of instruction is also referred to as the emergency evacuation plan.

Under the ETS and proposed rule, operators were to immediately revise existing firefighting and evacuation plans, retrain miners, and submit the revised plan to MSHA for review and approval. This process was a departure from the normal plan approval process whereby MSHA approval is required prior to implementation. The ETS implementation dates have passed, and the dates listed in the ETS are deleted from the final rule. Plans previously revised to comply with the ETS should need no further revision to comply with the final rule.

Final paragraph § 75.1502(a) explicitly requires underground coal mine operators to "adopt and follow" an approved mine emergency evacuation and firefighting program of instruction. The addition of the phrase "and follow" is a change from the ETS and the proposed rule, which stated that underground coal mine operators must "adopt" a program of instruction. Despite the lack of the phrase "and follow" in the ETS and the proposed rule, it has been MSHA's intent that mine operators follow their approved plans in the event of a mine emergency. The concurrent promulgation of § 75.1501 and § 75.1502 at the proposed rule stage demonstrates MSHA's intent that the standards function in unison. For example, under § 75.1501, the responsible person is required to initiate and conduct an immediate mine evacuation in the event that a mine emergency due to fire, explosion, or gas or water inundation presents an imminent danger to miners. The mine emergency evacuation and firefighting program of instruction would serve little purpose if the responsible person did not initiate and conduct the mine evacuation in accordance with the program of instruction. There would be little, if any, benefit to miners' safety if the responsible person were to initiate and conduct an uncoordinated, disorganized evacuation. In fact, no program of instruction would be necessary for such an evacuation. Although § 75.1501 and § 75.1502 were always intended to operate in an integrated manner, the agency is aware that the intent is better expressed by use of the phrase "adopt and follow." The explicit requirement that an operator "follow" the approved program of instruction once it is adopted is reflected in final § 75.1502(a). This requirement is consistent with MSHA's practice under existing § 75.370, *Mine ventilation plan; submission and approval,* which requires mine operators to follow their approved ventilation plan once developed.

As with other mine plans, subsequent changes or revisions may not be implemented at the mine until approved by the District Manager of the Coal Mine Safety and Health District in which the mine is located and the affected miners have been instructed in the revised provisions.

Paragraph (a) of § 75.1502 of the final rule adopts the language of the ETS and proposed rule with only minor changes that clarify the rule's intent. Under paragraph (a), MSHA retains the requirement of the ETS and the proposed rule that the existing program of instruction include the proper evacuation procedures in the event of a mine emergency. In addition, final paragraph (a) of § 75.1502 retains the requirements of former § 75.1101–23(a), the ETS, and the proposed rule, that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

MSHA expects that the plan must, at a minimum, cover the types of mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation. Mine operators may choose to cover in their plan other types of mine emergencies when evacuations would be appropriate as well.

A few commenters stated their belief that the purpose of the rule was to ensure that MSHA could second-guess decisions made during emergencies and issue citations. Typically, these commenters discussed the 2000 Willow Creek explosions (previously discussed in this preamble) and the January 21, 1986 fire at Jim Walter Resources No. 3 mine. At the Jim Walter Resources No. 3 mine, a fire occurred along the No. 1 longwall section face. The fire was apparently started by a cutting torch being used to dismantle the longwall conveyor. Two miners were injured as a result of the fire. Efforts to control the fire were unsuccessful and all miners were withdrawn from the mine. On January 22, 1986, it was decided to partially seal the mine. The seals were completed on February 16, 1986. In both cases, miners remained underground in hazardous conditions in an effort to control mine fires, despite the hazard of a major explosion. MSHA concluded that the § 75.1101–23 plan was not violated at either Willow Creek or Jim Walter No. 3. Similarly, under the final rule, MSHA will assess the overall evacuation response and actions taken to protect the safety of the miners, recognizing that an undesirable outcome is not necessarily a violation of the provisions of the mine emergency and firefighting program of instruction. MSHA continues to believe that increased awareness of responsibility for mine evacuations, improved plans and training will help eliminate fatal and non-fatal injuries during mine emergencies.

Final paragraphs (1) through (4) of paragraph (a), specify general topics to be developed and included in the program of instruction or plan. These include: (1) Mine emergency evacuation for mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation; (2) Evacuation of all miners not required for a mine emergency response; (3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and, (4) Operation of the fire suppression equipment available in the mine. These paragraphs are unchanged from the existing ETS and proposed rule. MSHA will publish, and make available at its Web site, a model plan as an example. Mine operators should develop plans that are suitable to the particular conditions existing at their mine. For example, a mine not employing an atmospheric monitoring system would not discuss how an AMS would be integrated into the plan. Similarly, a mine that has deployed a Personal Emergency Device (PED) system should include a discussion of how the system is integrated into its procedures for notification and evacuation.

As required under final paragraph (a)(1), the plan requires that all miners on all shifts be acquainted with procedures for mine emergency

evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation. The plan should indicate that other occurrences might also have the potential to result in a mine emergency causing the plan to be implemented. An example would be a massive roof fall near a primary ventilation shaft that short-circuits and interrupts mine ventilation. The plan should emphasize that miners exposed to an imminent danger be safely evacuated while ensuring that only appropriate responses are undertaken.

One commenter recommended that the word "endanger" in proposed paragraph (a)(1) of § 75.1502 be replaced with wording consistent with § 75.1501. MSHA agrees that ambiguity would be reduced by the use of consistent wording, and has replaced the word with the phrase "present an imminent danger to miners" in the final rule.

Paragraph (a)(2) requires that the plan explicitly instruct all miners not required for a mine emergency response to evacuate promptly. This paragraph is unchanged from the ETS and proposed rule. The plan should discuss the specific processes to be used at the mine to notify all miners that an evacuation is necessary. If a single communication system is used, the plan should detail procedures to be followed in the event of a communication system failure. Alternatively, if a secondary communication system is used, the plan should identify the system and state how the system would be used in an emergency evacuation. If the mine has deployed a PED system to all or certain miners, the plan should discuss how information would be distributed to ensure that all miners are notified of the need to evacuate. The plan should specify and discuss assembly areas on sections and other work locations along with preparations and assignments to be performed. For example, the plan could discuss how the section mechanic might be assigned to deenergize power when preparing to evacuate. The plan should discuss how local firefighting efforts integrate into the plan.

Several commenters noted that a timely evacuation would not be possible or practicable at a large mine unless transportation equipment was continuously maintained at working sections while miners were working. The approved mine emergency and firefighting plan should specify how transportation equipment is to be deployed and distributed within the mine. Plans should specify that transportation equipment be maintained on working sections when miners are working, and the conditions under which sufficient transportation equipment will not be maintained at working sections. One commenter stated that requiring transportation to be maintained at the working section could prevent evacuation of a single injured miner in need of medical attention, since the mantrip would be required to remain at the section. The Agency agrees that there could be instances when the transportation vehicle would not be available. If transportation is not available at the working section, contingencies should be described in the mine emergency and firefighting plan. The final rule allows mine operators sufficient flexibility to develop these aspects of the plan according to the needs of each individual mine.

Final paragraph (a)(3) is unchanged from the ETS and proposed rule. It requires that the plan address the rapid assembly and transportation of the necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency. The plan should discuss how persons responding to an emergency will be transported. It should also discuss the availability and location of fire suppression equipment and rescue apparatus that will be needed at the scene of the emergency. MSHA received a comment stating that retreating miners, especially in a track mine, could hinder the responsible person's efforts to direct emergency supplies or transportation to the site of the mine emergency. Also a commenter stated that the rule does not address having some means of transportation to respond to a mine emergency always at hand. These issues must be considered during development of a plan to assure that miners can be efficiently evacuated, even while a response is implemented, if a response is appropriate.

Another commenter wanted clarification on whether equipment assembly must be included during drills and, considering that most mines are covered by off-site mine rescue teams, whether these teams would need to be activated as a part of a training drill. MSHA responds by stating that existing MSHA-approved plans already discussed, in detail, the requirements for use and location of firefighting equipment. MSHA has not issued a detailed policy on the inclusion of equipment assembly or contacting off-site rescue teams in mine emergency evacuation drills. However, during the drills it would be appropriate for mine employees to review procedures for contacting off-site rescue teams and for emergency response personnel to make sure phone numbers are in working order. Locating and simulating equipment assembly would also be appropriate.

Paragraph (a)(4) of the final rule requires a specific plan designed to acquaint miners on all shifts with procedures for operating the fire suppression equipment available in the mine. The plan should indicate how storage areas will be marked and how equipment will be maintained in operational condition. This requirement assumes that outby miners would also be fully acquainted with emergency procedures to be followed and equipment to be used. This paragraph was adopted from previous § 75.1101–23 and remains unchanged from the ETS and proposed rule. It retains the same requirements for procedures for the operation of fire suppression equipment. No comments were received on this paragraph.

Final paragraph § 75.1502(b), including paragraphs (b)(1) through (b)(3), sets forth requirements for each operator of an underground coal mine to ensure that certain specified miners are proficient in the use of, and know the location of, fire suppression equipment. Each of these paragraphs was derived from, and retain the same requirements as, previous § 75.1101–23(b), the ETS, and the proposed rule.

Final paragraph (b)(1) requires the mine operator to ensure that at least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment.

One commenter requested that paragraph (b)(1) require every miner to be proficient in the use of fire suppression equipment and know the location of firefighting equipment. MSHA believes that final (b)(1) is appropriate because a working section is a relatively limited area and therefore two miners knowing where to locate the equipment, and being proficient in the use of the equipment, would be sufficient. In addition, the mine emergency evacuation program of instruction will require other miners to be assigned to duties such as de-energizing electrical power to the section, ensuring transportation is available should evacuation be necessary, locating water hoses, gathering fire extinguishers and rock dust, and maintaining telephone contact with surface personnel. This requirement recognizes that there will be a coordinated response among miners performing various tasks, including the two miners proficient in using the fire suppression equipment.

This requirement is unchanged from the proposed rule and ETS.

Final paragraph (b)(2) requires the mine operator to ensure that each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment. This requirement recognizes that the class of equipment referenced in this paragraph has been determined to warrant fire suppression devices and attendance. As reflected in final (b)(2), if attended equipment catches fire, all miners operating such equipment and performing job duties in the direct line of sight of such equipment will have the requisite knowledge to suppress or extinguish the fire. This requirement is unchanged from the proposed rule and ETS.

Final paragraph (b)(3) requires that the shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment. The requirement found in paragraph (b)(3) recognizes that a mine emergency due to fire may also occur on a maintenance shift where the locations of the miners may be more dispersed. This situation would differ from a production shift where there is generally a set number of miners near the face area. Therefore, rather than requiring the miners to be proficient within a geographical area of the mine, this provision focuses on ensuring that an adequate number of miners know the location of firefighting equipment and are proficient in using the fire suppression equipment.

One commenter requested that paragraph (b)(3) require every miner to be proficient in the use of fire suppression equipment and know the location of firefighting equipment. MSHA has determined that miners will be adequately protected by the requirement that the shift foreman and at least one miner for every five miners working underground on a maintenance shift be proficient in the use of fire suppression equipment. While the shift foreman will move throughout the mine, requiring at least one miner for every five to be proficient in the use of fire suppression equipment, will approximate the requirement in (b)(1). As in final paragraph (b)(1), MSHA recognizes that the mine emergency evacuation program of instruction will require other miners to be assigned to various other duties necessary to extinguish the fire. This requirement recognizes that there will be a coordinated response among miners performing various tasks, including the shift foreman and one miner for every five proficient in using the fire suppression equipment. This requirement is unchanged from the proposed rule and ETS.

Paragraph (c) requires each operator of an underground coal mine to require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such drills at intervals of not more than 90 days. This paragraph was derived from previous § 75.1101–23, and the final rule is unchanged from the ETS and the proposed rule. The final rule differs from previous § 75.1101–23 to the extent that drills conducted in accordance with the final rule will simulate actions required in mine emergency evacuations, whereas previous § 75.1101–23 only required a simulation of actions required in the event of emergencies due to fire. One commenter suggested that a grace period be provided to accommodate for any miners who may have been absent on the day of the drill. This comment was not adopted in the final rule because MSHA believes that the performance of drills every 90 days is essential to maintain miners' readiness to act, and familiarity with measures to be taken in the event of a mine emergency. Mine operators may exercise flexibility in meeting the requirement of this provision. For example, a mine operator may wish to conduct a drill only when he or she is certain that there is 100 per cent section attendance on a given shift, so long as all miners participate at intervals not exceeding 90 days.

Final paragraph (c)(1) requires that the mine operator certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. This paragraph is derived from former § 75.1101–23. Certifications shall be kept at the mine for one year and made available on request to an authorized representative of the Secretary and to the representative of the miners. One comment noted that, unlike most other recordkeeping requirements, this paragraph did not expressly provide the miners and the representatives of miners an opportunity to inspect the record. MSHA agrees that the record should be made available to the representatives of the miners. Accordingly, the final rule is revised to include a provision that requires the records be available on request to the representatives of miners. The final rule adds a new requirement to keep the evacuation drill certifications at the mine for one year. This language is consistent with other recordkeeping requirements in the standards and ensures that records are retained for a sufficient amount of time to verify that the mine emergency evacuation drills were properly conducted in accordance with § 75.1501(c).

Paragraph (c)(2) requires that for purposes of paragraph (c), a mine emergency evacuation drill must consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) through (4) of this section. The proposed rule contained a printing error that was corrected by the **Federal Register** on December 26, 2002 (67 FR 78713). However, the preamble to the proposed rule correctly noted that paragraph (c) of § 75.1502 "essentially retains the same requirements as existing § 75.1101–23(c). * * *" (67 FR 76662.) The final paragraph (c) of § 75.1502 is unchanged from the ETS and proposed rule.

Several comments were received on proposed paragraph (c)(2). Commenters requested guidance on the content of mine emergency evacuation drills. Requirements for mine emergency evacuation drills defined in § 75.1502(a)(1), as well as paragraphs (a)(2), (a)(3), and (a)(4), are explicitly referenced in this section.

Several commenters asked for clarification of what would constitute a "simulation." A "simulation" means a mock fire or emergency that results in firefighting actions and mine evacuation. Some mine operators currently conduct simulations using artificial smoke to imitate a fire at various locations. Other operators believe that a discussion during safety meetings is sufficient to meet this requirement, noting that the contents of the MSHA Program Policy Manual lists "group discussions" as one type of training for a fire drill. Although group discussions are listed in the manual as one possible element of a drill, discussions during safety meetings alone do not satisfy the requirement to conduct a drill consisting of a simulation of the actions required by the mine emergency evacuation plan. Demonstrations, discussions, and task-oriented training may be included as part of a comprehensive drill.

Several commenters suggested that guidance was needed on the contents of mine emergency evacuation drills. There are two aspects to the drills: firefighting and evacuation. Both should

be simulated at working sections and regular working stations. Operators should simulate fires and other emergencies at various locations and incorporate communication and notification as a part of the drill. The purpose of the drill is to prepare miners for fires, explosions, or gas or water inundations in their work locations or possible emergency responses, and to prepare them for evacuation due to emergencies in other parts of the mine. As suggested by some commenters, to the extent practicable, drills should be unannounced and the responsible person should be involved in the drills. Firefighting simulations should result in miners executing their assignments by retrieving material and equipment, assigned miners should retrieve fire extinguishers, hoses, and rock dust—although fire extinguishers and foam generators need not be expended. Miners assigned to remove section power should execute those assignments. Miners assigned to prepare mantrip vehicles and self-contained self-rescuers should make those preparations. The responsible person should conduct and coordinate mine emergency evacuation drills. Any deficiencies identified in locating or notifying all underground miners should be used to improve the system. Operators may concurrently conduct escapeway drills required under existing § 75.383 with these mine emergency evacuation and firefighting drills.

MSHA agrees with a comment submitted that the outcomes of mine emergency evacuation drills should be reviewed by mine personnel in order to improve the emergency evacuation plan. This is a common sense approach that MSHA believes mine operators will follow and consequently, MSHA has not included it in the rule.

Several commenters believed that drills required by paragraph (c)(2) did not apply to all miners, or to all shifts. This is not the case. All miners on all shifts are to participate in the required drills at not more than 90-day intervals. There is no exemption for idle, partially-staffed, maintenance, construction, or other non-producing shifts. A similar comment questioned whether the evacuation plan and drills applied to contractors. There is no exemption for contractors.

Another commenter believed that an evacuation resulting from a false alarm could not be considered a required drill. Drills can be conducted at any time provided drills occur at intervals of not more than 90 days. Accordingly, an unplanned drill (for example, due to a false alarm) meeting the elements discussed in § 75.1502(a)(1) through (a)(4) above can be accepted as a required drill. One commenter suggested that a drill should be acceptable if performed anytime during established 90-day cycle periods. This approach has not been adopted because under this approach six months could elapse between drills, and this length of time would undermine the goal of maintaining appropriate familiarity with firefighting and evacuation procedures. The final rule requires drills at intervals of not more than 90 days, as did the ETS and the proposed rule.

Some commenters stated that § 75.383, *Escapeway maps and drills,* should be moved from its current location and assimilated into final § 75.1502(c). Sections 75.380 through 75.383 pertain to escapeway requirements, escapeway maps, mechanical escape facilities, and drills. After considering this comment, MSHA has decided not to relocate escapeway drill requirements to this section. Although related, retaining the requirements for escapeway maps and drills in the current location will allow miners and mine operators to easily find and review all requirements related to escapeways in a common place.

Another commenter requested that MSHA reference ANSI Z490.1 Criteria for Accepted Practices in Safety, Health, and Environmental Training. MSHA has not included this reference in the final rule. Training issues are appropriately addressed in the rule in existing part 48 training requirements. Part 48 is the appropriate and clearly understood mechanism for training miners in response to mine emergencies.

Revisions to Part 48 Training and Retraining of Miners

MSHA is revising its existing training regulation in 30 CFR part 48.8, *Annual refresher training of miners; minimum courses of instruction; hours of instruction* to specifically include annual refresher training of miners for mine emergency evacuation and firefighting plans. In doing so, the language in the proposed rule is adopted without change. The training of new and experienced miners under part 48, however, does not need to be revised. Existing § 48.5(b)(5) provides for training new miners regarding emergency evacuation and firefighting plans and existing § 48.6(b)(5) provides for training experienced miners regarding emergency evacuation and firefighting plans.

Subpart A of 30 CFR part 48 prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks and providing annual refresher training.

The existing training requirements under § 48.5, *Training of new miners; minimum courses of instruction; hours of instruction,* and under § 48.6, *Experienced miner training,* do not need to be revised because emergency evacuation and firefighting training are provided under those existing sections. Annual refresher training under existing § 48.8, however, does not cover emergency evacuation or firefighting training. Therefore, § 48.8 is revised by this final rule to include a requirement that the annual refresher training include the mine emergency evacuation and firefighting plan. This training will acquaint all underground coal miners with a review of the emergency evacuation and firefighting plans in effect at the mine.

As with the proposed rule, all training required by the final rule will be delivered by an MSHA-approved instructor as required by part 48. The required training covering emergency evacuations falls under part 48. Also, documentation that training has taken place shall be kept at the mine and made available on request to an authorized representative of the Secretary and to the representative of the miners.

This final rule does not reduce the safety protection afforded miners under former § 75.1101–23. In fact, miner safety is enhanced because the final rule: provides for training all miners in mine emergencies which present an imminent danger to miners from explosions and gas or water inundations, not just mine fires; and requires miners to receive annual refresher training. This provision eliminates duplicate provisions and consolidates the training requirements under part 48. This modification of the training requirements under former § 75.1101–23 does not represent a reduction in safety to miners because the training requirements of § 75.1101–23 are incorporated in new § 75.1502 and the revised and existing sections of part 48.

C. Feasibility

We have determined that the requirements of the final rule are both technologically and economically feasible.

1. Technological Feasibility

MSHA believes that the rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA,* (AISI-II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA,* (AISI-I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dept., AFL–CIO* v. *Hodgson,* 499 F.2d 467, 478 (D.C. Cir. 1974).

This rule addresses revisions of mine emergency evacuation plans and associated training. This rule neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this rule is technologically feasible.

2. Economic Feasibility

Underground coal mines will incur costs of approximately $0.23 million yearly to comply with this rule. That these compliance costs represent well under 1 percent (about 0.003 percent) of annual underground coal mine revenue is sufficient evidence, MSHA believes, to conclude that this rule is economically feasible for underground coal mines.

II. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has determined that this rule would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the Small Business Administration. The factual basis for this certification is discussed in chapter V of the Regulatory Economic Analysis (REA).

III. Paperwork Reduction Act

This final rule has no new or revised collections of information as defined by the Paperwork Reduction Act of 1995 (P.L. 104–13). Section 75.1101–23 was redesignated as § 75.1502. Section 75.1101–23 was approved under OMB control number 1210–0054, with an expiration date of September 30, 2003. The existing paperwork requirements including § 75.1502 are approved under OMB control number 1219–0137, with an expiration date of June 30, 2006.

During the first year the final rule is in effect, and every year thereafter, the rule will impose 354 burden hours, and related burden hour costs of $19,456.

Comments were solicited in the proposed rule for the following issues:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the 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 respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

In response to the solicitation, several commenters requested that documents be made available to the miner's representatives. This issue is addressed in the section by section discussion.

Our paperwork submission summarized above is explained in detail in the REA that accompanies the rule. The REA includes the estimated costs and assumptions for the paperwork requirement related to the rule. A copy of the REA is available on our Web site at *http://www.msha.gov/regsinfo.htm* and can also be obtained in hardcopy from us. This paperwork requirement has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The OMB control number for this rule is 1219–0137.

IV. Executive Order 12866

The final rule contains all costs from the effective date. These economic statistics have been revised, as compared with the ETS and proposed rules, to reflect this change. This change excludes costs during the period between the effective date of the ETS and the effective date of this final rule. Also these statistics have been revised to reflect 2001 data and any new assumptions.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this rule and determined that it would not have an annual effect of $100 million or more on the economy. Therefore, we do not consider this rule to be economically significant under section 3(f)(1) of Executive Order 12866.

In the REA, MSHA has developed estimates of the safety benefits of this rule, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this rule been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this rule. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this rule could prevent 11 miners' lives from being lost every ten years, or an average benefit of the rule of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

V. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this rule would not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in this REA, compliance with this rule by coal mine operators and contractors covered within this rulemaking would result in a compliance cost of approximately $0.23 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

We have concluded that small governmental entities would not be significantly or uniquely impacted by this rule. This rule would cover 664 underground coal mining operations.

B. Executive Order 13132: Federalism

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism and have determined that it does not have "federalism implications." This rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this rule on children. The Agency has determined that this rule would have no adverse effect on children.

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

We certify that this rule would not impose substantial direct compliance cost on Indian tribal governments.

E. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this rule would not unduly burden the Federal court system. We drafted the rule to provide a clear legal standard for affected conduct.

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

In accordance with Executive Order 13211, we have reviewed the rule for its energy impacts. The rule would have no effect on the distribution or use of energy. The only impacts of the rule on the supply of energy would be through its effect on the price of coal.

The estimated yearly cost of the rule for the coal mining industry would be about $0.23 million.[1] The annual revenues of the coal mining industry in 2001 were approximately $17.1 billion.[2] The cost of the rule for the coal mining industry would therefore be 0.001% of revenues. Even if we were to suppose that the increased cost caused by the rule would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the rule would have no significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in chapter V of the REA, MSHA has determined that the rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 48

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Coal mines, Underground coal mining, Mine safety and health, Emergency medical services, Fire prevention, and recordkeeping requirements.

Dated: September 2, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ Chapter I of title 30, parts 48 and 75, of the Code of Federal Regulations is amended as follows:

PART 48—[AMENDED]

■ 1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

■ 2. Section 48.8 is amended by revising paragraph (b)(4) to read as follows:

§48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(4) *Roof or ground control, ventilation, emergency evacuation and firefighting plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation. In addition, for underground coal mines the course shall include a review of the emergency evacuation and firefighting plans in effect at the mine.

* * * * *

PART 75—[AMENDED]

■ 3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Subpart P is amended by revising the heading and by revising §75.1501 to read as follows:

Subpart P—Mine Emergencies

* * * * *

§75.1501 Emergency evacuations.

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) The mine operator shall instruct all miners of the identity of the responsible person designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

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[1] Estimate obtained from Table IV–1 of the REA.

[2] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 2001 PEIR data and U.S. Department of Energy, Energy Information Administration, Annual Coal Report 2001, March 2003, Table 29, pg. 52.

■ 5. Section 75.1502 (as redesignated from § 75.1101–23, Dec. 12, 2002, 67 FR 76658) is revised to read as follows:

§ 75.1502 Mine emergency evacuation and firefighting program of instruction.

(a) Each operator of an underground coal mine shall adopt and follow a mine emergency evacuation and firefighting program that instructs all miners in the proper evacuation procedures they must follow if a mine emergency occurs, location and use of firefighting equipment, and location of escapeways, exits, and routes of travel to the surface. Such program of instruction shall be approved by the District Manager of the Coal Mine Safety and Health district in which the mine is located. Before implementing any approved revision to the program of instruction, the operator shall instruct persons affected by the revision in any new provisions. The approved program of instruction shall include a specific plan designed to acquaint miners on all shifts with procedures for:

(1) Mine emergency evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation;

(2) Evacuation of all miners not required for a mine emergency response;

(3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and,

(4) Operation of the fire suppression equipment available in the mine.

(b) In addition to the approved program of instruction required by paragraph (a) of this section, each operator of an underground coal mine shall ensure that:

(1) At least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment;

(2) Each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment; and,

(3) The shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment.

(c) Each operator of an underground coal mine shall require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such evacuations at intervals of not more than 90 days.

(1) The operator shall certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine for one year and made available on request to an authorized representative of the Secretary, and to the representative of the miners.

(2) For purposes of this paragraph (c), a mine emergency evacuation drill shall consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) through (4) of this section.

[FR Doc. 03–22748 Filed 9–8–03; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–02–012]

RIN 1625–AA09

Drawbridge Operation Regulations; Lake Washington Ship Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations governing the drawspan of the Montlake Bridge across the east end of the Lake Washington Ship Canal by lengthening the hours that the draw need not open for the passage of vessels during the part of the year when vessel traffic is low. The change will relieve vehicular congestion during the peak congested period for road traffic.

DATES: This rule is effective October 9, 2003.

ADDRESSES: Comments and related material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–02–012 and are available for inspection or copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Lake Washington Ship Canal, WA, in the **Federal Register** (67 FR 189). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Washington State Department of Transportation (WSDOT) requested this change in the drawbridge operations schedule to alleviate traffic congestion in the Montlake area by increasing the periods for part of the year in which the drawbridge need not open for the passage of vessels.

The draw of the Montlake Bridge, mile 5.2, Lake Washington Ship Canal at Seattle, Washington, opens on signal except that the draw need not open for the passage of vessels from 7 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except federal holidays, for any vessel of less than 1000 gross ton, unless the vessel has in tow a vessel of 1000 gross tons or over. The draw need only open on the hour and half-hour from 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m. Between the hours of 11 p.m. and 5 a.m. the draw opens if one hour notice is provided. This notice requirement has been voluntarily suspended by WSDOT. The bridge is staffed by operators 24 hours a day. This change removes this nighttime notice provision.

The Montlake Bridge provides 48 feet of vertical clearance above the mean regulated lake level of Lake Washington for the central 100 feet of the bascule span. Navigation on the waterway includes tugs, gravel barges, construction barges, sailboats, motor yachts, kayaks, rowing shells, and government vessels.

The Lake Washington Ship Canal bisects Seattle from east to west and is currently crossed by two fixed highway bridges and four vehicular bascules, of which the Montlake is the easternmost. At the western extremity seaward of the Hiram Chittenden Locks at Ballard is a single-leaf railroad bascule.

The Montlake Bridge is critical to north-south road traffic in its area. The closest alternative crossing is about 0.8 mile to the west and cannot be reached easily without traveling other congested streets during peak traffic hours.

This change would alleviate vehicular congestion by lengthening the periods

that the bridge would be allowed to remain closed to marine traffic from the beginning of September to the end of April each year. These months correspond approximately to the foul weather period in Seattle when congestion is heaviest and vessel traffic is lowest.

Discussion of Comments and Changes

No comments were received in response to the notice and no change is being made to the rule as proposed in this rulemaking.

Regulatory Evaluation

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

The impact of this rule is expected to improve traffic flow on Montlake Boulevard without impeding navigation.

This conclusion is based on the fact that the majority of vessels plying the canal will not be hindered by this change. Many of the commercial and recreational vessels can pass the span without an opening. Vessel traffic diminishes significantly during the months that are affected while the annual maximal use period remains unaffected.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. There are no known small entities affected by this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no known effects of this rule that would warrant further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.1051(e)(2)(i) is revised and paragraph (e)(3) is removed to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(e) * * *

(2) * * *

(i) The draw need not open from 7 a.m. to 9 a.m. and from 3:30 p.m. to 6:30

p.m. from April 30 to September 1 and from 7 a.m. to 10 a.m. and from 3:30 p.m. to 7 p.m. from September 1 to April 30.

* * * * *

Dated: August 26, 2003.

Jeffrey M. Garrett,

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

[FR Doc. 03–22794 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302 and 303

RIN 0970–AB81

Child Support Enforcement Program; State Plan Requirements, Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE), HHS

ACTION: Final rule; correction.

SUMMARY: This document corrects the final child support enforcement regulations published in the **Federal Register** on May 12, 2003.

The final rule responded to comments on, and made technical corrections to, interim final child support enforcement regulations published in the **Federal Register** on February 9, 1999.

DATES: Effective on June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, Deputy Director, Policy Division, OCSE, phone (202) 401–5369; fax (202) 401–4054; E-mail: *ebrooks@acf.hhs.gov.*

Corrections: Vol. 68, No. 91, May 12, 2003 Rules and Regulations.

§ 302.70 [Corrected]

■ 1. On page 25303, column 2, in § 302.70 [Amended], amendment 11.a is corrected to read:

Paragraph (a)(4) is amended by removing ", in accordance with the requirements set forth in § 303.103 of this chapter".

§ 303.72 [Corrected]

■ 2. On page 25304, column 3, in § 303.72 [Amended], amendment 20.b is corrected to read:

Paragraphs (a)(6), (c)(2), (c)(4), (h)(5), and (i)(1) are amended by removing "Secretary of the Treasury" and adding "Secretary of the U.S. Treasury" in its place.

Dated: August 13, 2003.

Melissa Chapman,

Deputy Assistant Secretary, Office of Information Resources Management.

[FR Doc. 03–22905 Filed 9–8–03; 8:45 am]

BILLING CODE 4184–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2761, MB Docket No. 03–118, RM–10585]

Digital Television Broadcast Service; Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KXLF Communications, Inc., substitutes DTV channel 5 for DTV channel 15 at Butte, Montana. *See* 68 FR 27767, May 21, 2003. DTV channel 5 can be allotted to Butte, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 46–00–27 N. and 112–26–30 W. with a power of 10.7, HAAT of 588 meters and with a DTV service population of 149 thousand. Since the community of Butte is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective October 20, 2003.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–118, adopted August 28, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 15 and adding DTV channel 5 at Butte.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22909 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2755, MM Docket No. 01–55, RM–10034]

Digital Television Broadcast Service; Fayetteville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Arkansas Educational Television Commission, substitutes DTV channel *9 for DTV channel *45 at Fayetteville. *See* 66 FR 12751, February 28, 2001. DTV channel *9 can be allotted to Fayetteville, Arkansas, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 35–48–53 N. and 94–01–41 W. with a power of 19, HAAT of 509 meters and with a DTV service population of 675,000. With this action, this proceeding is terminated.

DATES: Effective October 20, 2003.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–55, adopted August 27, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor,

Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas, is amended by removing DTV channel *45 and adding DTV channel *9 at Fayetteville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22910 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0330612150–3214–02; I.D. 082903B]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

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

ACTION: Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific Coast. On September 1, 2003, 59,508 metric tons (mt) of the 110,908 mt harvest guideline is expected to remain unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted and any uncaught portion of the harvest guideline remaining unharvested in Subarea A (north of Pt. Arena, CA) and Subarea B (south of Pt. Arena, CA) be added together and reallocated, with 20 percent allocated to Subarea A and 80 percent to Subarea B; therefore, 11,902 mt is allocated to Subarea A and 47,600 mt is allocated to Subarea B. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific Coast and to achieve optimum yield.

DATES: Effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On December 31, 2002, NMFS published notice of a harvest guideline of 110,908 mt for Pacific sardine in the **Federal Register** (67 FR 79889) for the fishing season January 1, 2003, through December 31, 2003. The harvest guideline was allocated as specified in the FMP at that time, that is, one-third (36,969 mt) for Subarea A, which is north of 35° 40′ N. lat. (Pt. Piedras Blancas, CA) to the Canadian border; and two-thirds (73,939 mt)for Subarea B, which is south of 35° 40′ N. lat. to the Mexican border.

On August 26, 2003, a regulatory amendment to the FMP developed by the Pacific Fishery Management Council (Council) was approved, and a final rule implementing the amendment was published in the **Federal Register** on September 4, 2003 (68 FR 52523). The amendment (1) changed the definition of Subarea A and Subarea B by moving the geographic boundary between the two areas from Pt. Piedras Blancas, CA at 35° 40′ 00″ N. lat. to Pt. Arena, CA at 39° 00′ 00'' N. lat., (2) moved the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1, (3) changed the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B, and (4) reallocated all unharvested sardine that remain on December 1 coast wide.

Landings in the Pacific Northwest in 2003 have been below the landings for the same period during the 2002 fishing season. Landings by September 1 in Subarea A north of Pt. Arena are expected to be 23,400 mt; therefore, 13,569 mt of the initial allocation to Subarea A of 36,969 mt will remain unharvested. Landings in California have also been below landings for the same period in 2002. Landings by September 1 in Subarea B south of Pt. Arena are expected to be 28,000 mt; therefore, 45,939 mt of the initial allocation to Subarea B of 73,939 will remain unharvested. From the best information available, a total of 59,508 mt of the 110,908 mt harvest guideline is anticipated will remain unharvested on September 1. Therefore, according to the requirements of the FMP, as amended, 20 percent of 59,508 mt (11,902 mt) is allocated to Subarea A, and 80 percent of 59,508 mt (47,606 mt) is allocated to Subarea B.

Any portion of 110,908 mt harvest guideline that remains unharvested in Subarea A and Subarea B on December 1, 2003, will be available for harvest coast-wide until the 110,908 mt harvest guideline is reached and the fishery closed.

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because redistribution of the harvest guideline is a ministerial act required by the FMP to ensure that all harvesters have access to the resource. This action relieves potential restrictions on those affected by Federal regulations, and affording additional notice and comment would impede the agency's ability to manage Pacific sardine. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness of this rule.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

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

Dated: September 4, 2003.

Richard W. Surdi,

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

[FR Doc. 03–22920 Filed 9–5–03; 11:09 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AK05

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation regarding the detail of executive branch employees to the legislative branch. The purpose of the revision is to set forth guidelines for executive branch detailees to the legislative branch.

DATES: Comments must be received on or before October 24, 2003.

ADDRESSES: Send or deliver comments to Ms. Leah M. Meisel, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415–9700; e-mail *employ@opm.gov*; fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Mahoney by telephone on 202–606–0960, by FAX 202–606–2329, or by TDD on 202–418–3134, e-mail *mjmahone@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations under 5 U.S.C. 1103, setting forth guidelines for executive branch detailees to the legislative branch. The purpose of this proposed regulation is to maintain the separation of powers under the Constitution and prevent conflicts of interest among the branches and individuals involved.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 300 of Title 5 of the Code of Federal Regulations as follows:

PART 300—EMPLOYMENT (GENERAL)

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

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.311 through 300.316 also issued under 5 U.S.C. 1103.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Amend part 300 by adding §§ 300.311 through 300.316 and a new center heading to read as follows:

Detail of Government Employees From the Executive Branch to the Legislative Branch

§ 300.311 Definitions.

In this part: *Agency* means a military department and an executive agency as defined in this section;

Employee has the same meaning as in 5 U.S.C. 2105 and a member of the uniformed services as defined in this section;

Executive agency has the same meaning as in 5 U.S.C. 105, exclusive of the General Accounting Office;

Military department has the same meaning as in 5 U.S.C. 102;

OPM means The United States Office of Personnel Management;

Uniformed Services has the same meaning as in 10 U.S.C. 101.

§ 300.312 Detail of executive branch employees to the legislative branch.

No executive agency (agency) shall detail, assign, or otherwise make available an employee of such agency for the performance of functions within or under the supervision of the legislative branch, without the approval of the Director of the Office of Personnel Management ("Director of OPM"). The Director of OPM shall not approve such detail, assignment, or making available for a period exceeding 180 days, except that, upon request from the office of the legislative branch to which the employee is detailed, assigned, or made available, the Director of OPM may approve one additional period not to exceed 180 days.

§ 300.313 Approval of Details.

The Director of OPM shall not give approval with respect to an employee under § 300.312 unless:

(a) The functions to be performed by the employees within or under the supervision of the legislative branch:

(1) Will not involve;

(i) A conflict with respect to present or potential differing interests of the executive branch and the legislative branch; or

(ii) Any breach of applicable rules of professional conduct, including those governing the conduct of attorneys; and

(2) Will not involve disclosure, or any significant risk of disclosure, of information within the constitutional authority of the Executive to withhold because disclosure could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; and

(b) The detail, assignment, or making available is consistent with applicable law, including section 1301(a) of title 31, United States Code.

§ 300.314 Termination.

The Director of OPM may direct the head of an agency to, and upon such direction, the head of such agency shall, terminate the detail, assignment, or making available of an employee of such agency for the performance of functions within or under the supervision of the legislative branch, whether made before or after the publication of this regulation in the **Federal Register**, when, in the Director's judgment after consultation with the head of the agency, the continuation of such detail, assignment, or making available would not be consistent with the criteria for approval set forth in § 300.313.

§ 300.315 Reporting.

On a semi-annual basis, heads of agencies shall file a written report with

the Director of OPM describing each detail, assignment, or making available of an agency employee for the performance of functions within or under the supervision of the legislative branch.

§ 300.316 Effect on existing details.

Any detail, assignment, or making available of an employee of an agency for the performance of functions within or under the supervision of the legislative branch that is in effect immediately prior to the publication of this regulation in the **Federal Register** shall terminate not later than January 2, 2004, unless approved by the Director of OPM prior to that date under § 300.313.

[FR Doc. 03–22904 Filed 9–8–03; 8:45 am]
BILLING CODE 6325–38–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and –300 series airplanes. For all airplanes, this proposal would require installation of a placard that advises of weight limits for a certain electrical rack, accomplishment of a one-time inspection and records check to determine the amount of weight currently installed in that rack, and removal of equipment from that rack if necessary. For certain airplanes, this proposal also would require a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain other electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in certain other electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable. This action is necessary to prevent failure of the tie rods supporting certain electrical racks and the center stowage bins, which could cause the racks or stowage bins to fall onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–89–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, under certain conditions on Boeing Model 777–200 and –300 series airplanes, the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure can break. Multiple broken tie rods could allow the center stowage bins and electrical racks to fall onto the passenger seats below during an emergency landing. This condition, if not corrected, could impede an emergency evacuation or result in injury to passengers.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002. For all airplanes, the service bulletin describes procedures for installing a placard showing weight limits for electrical rack E7. For certain airplanes, the service bulletin also describes procedures for additional actions, as follows:

- A one-time inspection of the clevis end of the vertical tie rods that support

the center stowage bins to measure the exposed thread, and installation of a threaded sleeve if necessary.

- Replacement of the vertical tie rods that support the center stowage bins with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, and inspecting through the witness hole to make sure tie rod threads are visible).
- Replacement of the vertical tie rods that support electrical racks E9, E11, and E13 (including replacing the existing tie rod with a new improved tie rod, replacing an existing tie rod clamp with a new improved tie rod clamp, inspecting certain electrical racks for "free play," adjusting jam nuts if necessary, and inspecting through the witness hole to make sure tie rod threads are visible); as applicable.
- Installation of placards showing weight limits for electrical racks E9, E11, E13, and E15; as applicable.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the applicable actions specified in the service bulletin described previously, except as discussed below under the heading "Differences Between Proposed Rule and Service Bulletin." The proposed AD would also require a one-time records review and inspection to verify that the weight of equipment currently installed in certain electrical racks meets specified weight limits. This records review and inspection would involve determining what extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that the subject equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard. If the weight of the equipment exceeds the limit specified on the placard, equipment must be removed from the rack to meet the requirement.

In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the normal maintenance schedules for the majority of affected operators. In consideration of these factors, we have determined that 5 years represents an appropriate interval of time allowable wherein the proposed actions can be accomplished during scheduled maintenance intervals for the majority of affected operators. We find that this will ensure an acceptable level of safety.

Clarification of Inspection Types

The service bulletin refers to an inspection of the clevis end of the vertical support tie rod to determine whether a threaded sleeve is required. We find that, since the inspection involves measuring the length of the exposed thread, the procedures for this inspection constitute a detailed inspection. This type of inspection is defined in Note 1 of this proposed AD.

As part of the procedures for replacing the vertical support tie rods, the service bulletin specifies to inspect through the witness hole to ensure that tie rod threads are visible. We find that this inspection constitutes a general visual inspection. This type of inspection is defined in Note 2 of the proposed AD.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the disposition of those conditions per a method approved by the FAA.

Operators also should note that, as explained previously, this proposed AD would require a one-time records review and an inspection that are not included in the service bulletin. We find that these additional actions are necessary to ensure that the weight of equipment currently installed in certain electrical racks is within the limits specified in the placards to be installed per the service bulletin referenced in this proposed AD.

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

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

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 282 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes: The records check and inspection to determine the weight currently installed in electrical rack E7 would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection on U.S. operators is estimated to be $5,460, or $65 per airplane.

For all airplanes: It would take approximately 1 work hour to accomplish the proposed installation of a placard specifying weight limits for electrical rack E7, at an average labor rate of $65 per work hour. Required parts would cost approximately $29. Based on these figures, the cost impact of this proposed placard installation on U.S. operators is estimated to be $7,896, or $94 per electrical rack.

For airplanes subject to the records check and inspection to determine the weight currently installed in electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection is estimated to be as much as $260 per airplane.

For airplanes subject to the installation of a placard specifying weight limits for electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $29 per electrical rack. Based on these figures, the cost impact of this proposed installation is estimated to be as much as $376 per airplane.

For airplanes subject to the inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread: It would take as much as 3 work hours per airplane (0.25 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection is estimated to be as much as $195 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the center stowage bins: It would take as much as 6 work hours per airplane (0.5 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,020 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,410 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the electrical racks: It would take as much as 2 work hours per airplane (0.5 work hour per tie rod with up to 4 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,012 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,142 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–89–AD.

Applicability: Model 777–200 and –300 series airplanes; line numbers 002 through 151 inclusive, 153 through 157 inclusive, 159 through 195 inclusive, 197 through 211 inclusive, 213 through 237 inclusive, 239 through 241 inclusive, and 243 through 282 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure, which could cause the center stowage bins and electrical racks to fall onto passenger seats below, impeding an emergency evacuation or injuring passengers, accomplish the following:

Inspection To Determine Weight and Placard Installation

(a) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph E., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, do the applicable actions in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install placards that show weight limits for electrical racks E7, E11, and E15; as applicable; per the Accomplishment Instructions of the service bulletin.

(2) For each electrical rack on which a placard was installed per paragraph (a)(1) of this AD: Perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what extra equipment has been installed, if any, in the subject rack of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (a)(1) of this AD. If the weight is outside the limits specified in the placard to be installed per the service bulletin, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

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

Inspection To Measure Exposed Thread

(b) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph C., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, perform a detailed inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread, per the Accomplishment Instructions of the service bulletin. If the measurement of the exposed thread is outside the limits specified in Figure 2 of the service bulletin, before further flight, perform all corrective actions specified in steps 2 through 15 inclusive of Figure 2 of the service bulletin. Perform the corrective actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD.

Replacement of Tie Rods for Center Stowage Bin

(c) For airplanes in Group 21, as listed in the Airplane Group column of the table under paragraph 3., Part 1, paragraph D., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, replace the vertical support tie rods for the center stowage bin with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment of the clevis) by doing all actions specified in steps 1 through 8 of Figure 3 of the service bulletin. Do these actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD. Any required adjustment of the clevis must be done before further flight.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior

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

Inspection To Determine Weight, Tie Rod Replacement, and Placard Installation

(d) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph F., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Do the actions in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Within 5 years after the effective date of this AD, replace the vertical support tie rods for electrical racks E9, E11, and E13 (including replacing the existing tie rods with new improved tie rods, replacing an existing tie rod clamp with a new improved tie rod clamp, performing a free-play inspection of certain electrical racks, adjusting jam nuts as applicable, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment to ensure tie rod threads are visible) by doing all actions specified in Figures 5, 6, 7, and 9 of the service bulletin; as applicable. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment must be done before further flight.

(2) Before further flight after accomplishing paragraph (d)(1) of this AD, install placards that show weight limits for electrical racks E9, E11, and E13; as applicable; per the Accomplishment Instructions of the service bulletin.

(3) For each electrical rack on which a placard was installed per paragraph (d)(2) of this AD: Before further flight after accomplishing paragraphs (d)(1) and (d)(2) of this AD, perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what, if any, extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (d)(2) of this AD. If the weight is outside the limits specified in the placard, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

Exception to Service Bulletin Instructions

(e) Where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 2, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22890 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600R and A300 F4–600R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600R and A300 F4–600R series airplanes, that currently requires a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That AD also requires repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This action would mandate modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 9, 2003.

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

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1999, the FAA issued AD 99–27–07, amendment 39–11488 (65 FR 213, January 4, 2000), applicable to all Airbus Model A300 B4–600R and A300 F4–600R series airplanes, to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That action also requires repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That action also reduces the applicability to include only those airplanes that have a trim tank system installed. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–27–07, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 2002–132(B) dated March 20, 2002. The French airworthiness directive continues to require repetitive inspections for damage of the center tank fuel pumps and fuel pump canisters and replacement of any damaged parts, and mandates modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by AD 99–27–07.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–6069, Revision 01, dated May 28, 2002, which describes procedures for modification of the canisters of the center tank fuel pumps. The modification includes drilling holes on the doubler for the canister locating pins; installing the locating pins; preparing the fastener holes for electrical bonding; and installing new, improved canisters and canister bonding leads. The service bulletin also describes procedures for an operational test of the center tank fuel pumps after accomplishment of the modification.

Airbus also has issued Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002. The original issue of the service bulletin was referenced in the existing AD for accomplishment of certain inspections and corrective action. Airbus also previously issued Revision 01, dated May 31, 1999; Revision 02, dated October 29, 1999; and Revision 03, dated September 4, 2001. None of these revisions contain substantial changes from the original issue.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–132(B), dated March 20, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–27–07 to continue to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. The proposed AD also would continue to require repetitive visual inspections for damage of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This new action would mandate modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 84 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are required by AD 99–27–07 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions

is estimated to be $130 per airplane, per inspection cycle.

The inspections required by AD 99–27–07 were applicable to approximately 67 airplanes. Based on the figures discussed above, the cost impact of the current requirements of that AD on U.S. operators is estimated to be $8,710.

In this proposed AD, the inspections are applicable to approximately 17 additional airplanes. Based on the figures discussed above, the new costs to U.S. operators that would be imposed by this proposed AD are estimated to be $2,210.

The new modification proposed in this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $150 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $72,660, or $865 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11488 (65 FR 213, January 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–97–AD. Supersedes AD 99–27–07, amendment 39–11488.

Applicability: Model A300 B4–600R and A300 F4–600R series airplanes, certificated in any category, on which Airbus Modification 4801 (trim tank system) has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank, accomplish the following:

Restatement of Requirements of AD 99–27–07

Inspections

(a) Prior to the accumulation of 5,000 total hours, time-in-service, or within 250 hours, time-in-service after February 8, 2000 (the effective date of AD 99–27–07, amendment 39–11488), whichever occurs later, perform a detailed inspection for damage of the center tank fuel pumps and fuel pump canisters, in accordance with Airbus All Operators Telex (AOT) 28–09, dated November 28, 1998. Repeat the inspection prior to the accumulation of 12,000 total hours time-in-service, or within 250 hours time-in-service after accomplishment of the initial inspection, whichever occurs later. Thereafter, repeat the inspection at intervals not to exceed 250 hours time-in-service, until accomplishment of the initial inspection required by paragraph (b) of this AD.

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

(b) At the applicable time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD: Perform a detailed inspection to detect damage of the center tank fuel pumps and perform an eddy current inspection to detect damage of the fuel pump canisters, in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999; or Airbus Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles, until accomplishment of paragraph (d) of this AD. Accomplishment of the initial inspections required by this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) For airplanes that have accumulated 11,000 or more total flight cycles as of February 8, 2000: Inspect within 300 flight cycles after February 8, 2000.

(2) For airplanes that have accumulated 8,500 or more total flight cycles, but fewer than 11,000 total flight cycles, as of February 8, 2000: Inspect within 750 flight cycles after February 8, 2000.

(3) For airplanes that have accumulated fewer than 8,500 total flight cycles as of February 8, 2000: Inspect prior to the accumulation of 7,000 flight cycles, or within 1,500 flight cycles after February 8, 2000, whichever occurs later.

Corrective Action

(c) If any damage is detected during any inspection required by this AD, prior to further flight, replace the damaged fuel pump or fuel pump canister with a new or serviceable part in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999; or Airbus Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002.

Inspections/Corrective Action Accomplished Per Previous Issues of Service Bulletin

(d) Inspections and corrective action accomplished before the effective date of this AD per Airbus Service Bulletin A300–28–6061, Revision 01, dated May 31, 1999; Revision 02, dated October 29, 1999; or Revision 03, dated September 4, 2001; are considered acceptable for compliance with the corresponding actions specified in this AD.

New Requirements of This AD

Modification

(e) Within 18 months after the effective date of this AD: Modify the canisters of the center tank fuel pumps (including an operational test) by doing all the actions per paragraphs 3.A., 3.B., 3.C., and 3.D. of the Accomplishment Instructions of Airbus Service Bulletin A300–28–6069, Revision 01, dated May 28, 2002. Accomplishment of this modification ends the repetitive inspections required by paragraph (b) of this AD.

(f) Accomplishment of the modification before the effective date of this AD per

Airbus Service Bulletin A300–28–6069, dated September 4, 2001, is acceptable for compliance with the modification required by paragraph (d) of this AD.

Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–27–07, amendment 39–11488, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–132(B), dated March 20, 2002.

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22891 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. This action would continue to require the modification and installation, but would add new modifications of the bonding leads for certain airplanes. This action also would change the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 9, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–125–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 13, 2000, the FAA issued AD 2000–14–15, amendment 39–11825 (65 FR 45513, July 24, 2000), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–14–15, Airbus has issued Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; and Revision 05, dated August 27, 2002. The original issue of the service bulletin was referenced as the appropriate source of service information for doing the actions required by that AD. Revisions 01, 02, and 03 of the service bulletin contain revised procedures, which include increasing the quantity of bonding leads installed. Revision 04 adds procedures for airplanes modified per the original issue of the service bulletin. The added procedures in Revision 04 involve installing an additional bonding lead at Rib 15 on the jet pump system for Model A319 and A320 series airplanes, or on the recirculation system for Model A321 series airplanes. Revision 04 also describes procedures for an electrical bonding resistance check upon completion of the modification. Revision 05 adds no additional work for airplanes modified by any of the previous revisions.

Airbus also has issued Service Bulletin A320–28–1079, dated November 30, 1998. The service bulletin describes procedures for modification of the fuel system of the additional center fuel tank. The modification includes cleaning certain bonding point attachments, sealing the bonding point attachments, and installing new bonding leads between the flanges of the fuel and vent pipes. The service bulletin also describes procedures for an electrical bonding resistance check upon completion of the modification.

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 2002–202(B), dated April 17, 2002, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–14–15 to continue to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. The proposed AD also would add new modifications of the bonding lead for certain airplanes, and would change the applicability in the existing AD by excluding airplanes having the new modification. The actions would be required to be accomplished in accordance with the service bulletins described previously.

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

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

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 227 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2000–14–15 take between 20 and 100 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be between $295,100 and $1,475,500; or between $1,300 and $6,500 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1077, Revision 04, it would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new proposed requirements on U.S. operators is estimated to be $130 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1079, it would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new proposed requirements on U.S. operators is estimated to be $390 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11825 (65 FR 45513, July 24, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–125–AD. Supersedes AD 2000–14–15, amendment 39–11825.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any

category; excluding those on which Airbus Modifications 27150, 27955, and 27472 have been installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the fuel tank, accomplish the following:

Restatement of Requirements of AD 2000–14–15

Modification and Installation

(a) Within 36 months after August 28, 2000 (the effective date of AD 2000–14–15, amendment 39–11825), modify the fuel pipe couplings and install bonding leads in the specified locations of the fuel tank, per the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, dated July 9, 1999; Revision 01, dated April 26, 2000; Revision 02, dated June 28, 2000; Revision 03, dated October 3, 2000; Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002. As of the effective date of this AD, only Revisions 01, 02, 03, 04, and 05 may be used.

New Requirements of This AD

Modification and Installation

(b) Do the applicable actions required by paragraphs (b)(1) and (b)(2) of this AD at the times specified.

(1) For airplanes on which the actions required by paragraph (a) of this AD have been done per Airbus Service Bulletin A320–28–1077, dated July 9, 1999: Within 36 months after the effective date of this AD, install an additional bonding lead (including an electrical resistance check) by doing all the actions per paragraphs 3.B.(3) and 3.C. of the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002.

(2) For airplanes on which an additional center fuel tank is installed, as described in Airbus Service Bulletin A320–28–1079, dated November 30, 1998: Within 20 months after the effective date of this AD, modify the fuel system of the additional center fuel tank (including an electrical resistance check) by doing all the actions per paragraphs 2.A. through 2.E. of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–14–15, amendment 39–11825, are not considered to be approved as alternative methods of compliance with this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–202(B), dated April 17, 2002.

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22892 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2001–8954]

RIN 2125–AE86

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on proposed revisions to its National Bridge Inspection Standards (NBIS). This proposed action is necessary to address perceived ambiguities in the NBIS that have been identified since the last update to the regulation fourteen years ago. The proposed changes would clarify the NBIS language that is vague or ambiguous; reorganize the NBIS into a more logical sequence; and make the regulation easier to read and understand, not only by the inspector in the field, but also by those administering the highway bridge inspection programs at the State and Federal agency level.

DATES: Comments must be received on or before November 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, P.E., Federal Lands Highway, HFPD–9, (202) 366–9486, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The FHWA bridge inspection program regulations were developed as a result of the Federal-Aid Highway Act of 1968 (sec. 26, Public Law 90–495, 82 Stat. 815, at 829) that required the Secretary of Transportation to establish national bridge inspection standards (NBIS). The primary purpose of the NBIS is to locate and evaluate existing bridge deficiencies to ensure the safety of the traveling public.

The 1968 Federal-Aid Highway Act directed the States to maintain an inventory of Federal-aid highway system bridges. The Federal-Aid Highway Act of 1970 (sec. 204, Public Law 91–605, 84 Stat. 1713, at 1741) limited the NBIS to bridges on the Federal-aid highway system. After the Surface Transportation Assistance Act

of 1978 (STAA) (sec. 124, Public Law 95–599, 92 Stat. 2689, at 2702) was passed, NBIS requirements were extended to bridges greater than 20 feet on all public roads. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA) (sec. 125, Public Law 100–17, 101 Stat. 132, at 166) expanded bridge inspection programs to include special inspection procedures for fracture critical members and underwater inspection.

The condition of our nation's bridges is of paramount importance to the FHWA. In proposing revisions to the NBIS regulations, the FHWA will continue to ensure the "proper safety inspection and evaluation of all highway bridges" for the safety of the traveling public.

Accordingly, a seven-member FHWA team was formed to examine and analyze comments to the ANPRM and write the proposed rule. This team has over 92 years of combined experience working with the NBIS regulations and over 140 years of combined experience working with bridges and structures. Six of the team members are licensed professional engineers (PE).

Discussion of Comments Received to the Advance Notice of Proposed Rulemaking (ANPRM)

The FHWA issued an ANPRM on September 26, 2001, at 66 FR 49154, to solicit comments on whether to revise the NBIS to incorporate current, state-of-the-art bridge inspection practices. The FHWA received 51 sets of comments to the docket. Comments to the ANPRM were submitted by representatives from 30 States, 3 Federal agencies, 2 counties, 5 consulting firms, 7 private citizens, 3 trade associations and 1 public interest group. In summary, the majority of the commenters believed the NBIS should be revised.

Application of Standards

Most commenters believed the present definition of bridge should not be modified and has generally been accepted by most public authorities. In general, commenters felt that the existing bridge definition is well understood and recognized within the bridge community. The New York DOT indicated that its State law defines a bridge the same way and therefore, the current definition should not be changed.

The Advocates for Highway and Auto Safety commented that it would be appropriate for the FHWA to revisit the definition and consider expanding the national bridge inventory (NBI) to include all structures that can reasonably be said to perform bridge functions.

The New Jersey, Delaware, New Hampshire, Florida, and Connecticut DOT's and the American Road and Transportation Builders Association (ARTBA) indicated a preference to maintain the current method of determining bridge length and what minimum length should be used for reporting purposes. The South Dakota DOT and five private citizens indicated that they have concern regarding the definition as it applies to highly skewed, short-span reinforced concrete box culverts. The Minnesota DOT indicated that the State has changed their bridge length definition from 20 to 10 feet. The Maryland DOT recommended an alternative way to measure bridge length from "back of back wall" to "back of back wall" for beam type structures. The Advocates for Highway and Auto Safety (Advocates) commented that there are many bridges that are in all respects similar to bridges that are included in the NBI but are not counted since they are less than 20 feet. Also, the Advocates commented that the FHWA adopted the American Association of State Highway Transportation Officials (AASHTO) bridge definition without serious discussion or debate and without the agency compiling an independent record to support the AASHTO bridge definition.

On the question we posed in the ANPRM regarding the "impact of the possible inclusion of more bridges on public authorities, or on the FHWA that maintains the inventory, or on the highway bridge replacement and rehabilitation program (HBRRP) funds," many commenters felt that doing this would add additional bridges to the inventory, require additional resources to inspect those bridges and place a burden on existing HBRRP funds. The Florida DOT thought the increase in bridges to be inspected would be minimal. The Iowa DOT felt public authorities should use their own expertise and experience in deciding how and when to inspect structures that do not meet the NBIS bridge definition. The Wyoming DOT felt public authorities can elect to inspect structures 20 feet or less in length if they feel it is warranted. The Advocates commented that under an expanded definition there would be improved public safety, the NBI would be an even more comprehensive bridge inventory and it would focus more attention and Federal resources, (*i.e.*, HBRRP funds) on deficient structures.

Inspection Procedures

Most commenters did not want to see the current five-year underwater inspection interval changed. Three private citizens, David Stevens, Mark Bostick and William Hovell commented that they wanted to see the interval reduced to coincide with the two-year biennial above water inspections. The Advocates commented that it felt that the FHWA considers the bridge support above water as separate and distinct from portions of the bridge support below the waterline; it asked the FHWA to include underwater elements of bridge supports in the definition "bridges." The Advocates also commented that until there is a valid basis (*i.e.*, collected information, studies, scientific data) for evaluation of the 5-year cycle, the FHWA should not entertain extending that interval beyond 5 years. The Connecticut DOT indicated that it inspects at a two-year interval. Collins Engineers, Inc. indicated that many agencies schedule underwater inspections to coincide with biennial inspections. The New Jersey DOT and Department of the U.S. Navy recommended a four-year interval to correlate with the regular NBIS inspection. A number of State transportation departments, consulting firms and private citizens wanted the inspection interval tied to materials of the bridge and its environment.

A majority of commenters did not feel that those performing underwater inspections must be qualified licensed professional engineers. Four State transportation departments and the American Road and Transportation Builders Association felt that qualifications should be the same as those performing above water inspections. The California DOT felt that the team leader must be a licensed professional engineer and a qualified diver. The South Dakota DOT, Department of the U.S. Navy, and Collins Engineers, Inc. supported the concept of professional engineer-diver.

Most commenters felt that incorporating the evaluation of scour at bridges criteria within the NBIS regulation would have little impact since most States have scour programs. Regarding incorporation of the scour technical advisory within the NBIS some State transportation departments were in favor and some were not. The North Dakota DOT indicated that local authorities should be performing post storm event inspections and therefore post storm event inspections did not need to be addressed in the regulations. The North Carolina DOT felt that requiring States to have a major storm

event plan of action would be acceptable. The Advocates commented that the FHWA should affirmatively review the need for separate inspections specifically to determine if scour has occurred following floods, storms, earthquakes, etc. and whether scour inspections on certain bridges should be automatically required within a specified period of time.

Frequency of Inspection

Most commenters were not in favor of increasing the maximum inspection interval beyond the current four-year interval. New Jersey, North Carolina, Oregon, Florida and New Hampshire DOT's indicated that they do not use an extended inspection cycle and see no benefit in extending the inspection interval. Florida and New Hampshire DOT's indicated that State statute required a two-year inspection frequency. The Advocates commented that short inspection intervals should be maintained at two years, and that longer inspection intervals (not (to) exceed four years) are permissible as long as decisions for longer inspections are supported by engineering data.

Qualifications of Personnel

Most commenters indicated that the individual in charge of inspection and reporting, who is a Professional Engineer (PE), should be required to have the same training as a bridge inspector and have additional experience in bridge inspection. Three private citizens, Craig Fink, Mathew Farrar, and Gary Doerr along with the Wyoming, Iowa, Tennessee, Illinois, Minnesota, Maine, California and Utah DOT's indicated that having the same training as bridge inspectors was not necessary. Two private citizens, Craig Fink and Gary Doerr, and the Minnesota, Maine, and California DOT's mentioned that the rules and regulations governing professional registration would ensure that the professional engineer be competent in the area of practice. The Michigan DOT indicated that in addition to initial training the individual in charge should have refresher training. The Advocates commented that those overseeing and conducting bridge inspections have adequate experience and appropriate and relevant education.

Commenters were evenly divided as to the need for certification training in proportion to the complexity of the bridge being inspected. The Wyoming and Wisconsin DOT's and 3 private citizens felt that adequate training is fine; however, it should be combined with relevant and verifiable experience. The New Jersey, California and Florida DOT's were strongly opposed to the idea of multi-level certifications and the New Jersey DOT thought that it would be difficult to administer. The Washington, Iowa and New York DOTs thought certification should be established by each agency or State. The Advocates commented that the NBIS should require levels of training appropriate for the complexity of the bridge structure to be inspected.

In the current regulation, the discipline of a professional engineer who is in charge of inspection and reporting is not specified. The majority of commenters thought the professional engineering discipline (*i.e.*, civil, structural, etc) should be specified within the regulation. A private citizen, Gary Doerr, along with the Minnesota, Florida and Illinois DOT's thought this unnecessary since it is adequately addressed within each State's rules and regulations governing professional registration. The Advocates commented that the NBIS should require that the person performing inspections and reporting be either a civil or structural professional engineer, with a minimum of five years experience in bridge inspection, and have periodic refresher training in latest inspection techniques and technologies.

Inspection Report

Most commenters believed that oversight of inspection efforts and quality control/quality assurance procedures, necessitated that inspection reports be changed by management when errors were encountered. Most commenters agreed that changes should be allowed, as long as the field inspector has been notified and concurs with the change. The Wisconsin, Delaware and Massachusetts DOTs indicated that only the inspection team leader should be authorized to make changes to an inspection report.

Inventory

Most commenters felt that the NBIS reporting requirements were reasonable and need not be changed. The Florida DOT indicated that the States should be relieved of the requirement to maintain data on Federal agency bridges since that information is supplied directly to the FHWA.

Reorganization of the Regulation

The Delaware DOT thought the regulations ambiguous and should be refined. The Oregon DOT felt that much upgrading and reorganization is needed. One of the questions posed in the ANPRM was whether the current NBIS correctly addresses the requirements of 23 U.S.C. 151 and the comments indicate that it does.

Recommended Improvements

Eleven State transportation departments recommended improvements to bridge inspection procedures. The Virginia DOT wanted to expand the NBIS to promote both safety inspections and maintenance evaluations. The Minnesota DOT wanted the NBIS to address private bridge ownership compliance with NBIS requirements. National certification standards, was mentioned by the Delaware DOT. The Massachusetts DOT wanted clarification of the term "unique or special feature." The South Dakota DOT suggested "less stringent inspector qualifications for more simple type of structures." The Oregon DOT proposed the incorporation of "element level bridge inspection" data. The Washington DOT suggested that the NBIS include any "structural element that can impact safety," *e.g.*, sign structures, mechanical and electrical components on movable structures, tunnels and retaining walls.

Lastly, nine State transportation departments and a private citizen recommended specific procedures to enhance the NBIS which include the following: Handheld computer data entry in the field; flexibility in minimum inspection intervals for newer or historically stable bridges; flexibility for the States to set qualification standards and certify their inspectors; enhance technology and attract engineers to the bridge inspection field; provide a communication element among the States; establish unambiguous definitions; review the NBIS regulations on a more regular basis; establish a quality control/quality assurance program; use element level inspection data; define arms length inspections; and clarify inspector qualifications.

Summary of the Proposed Revisions to the NBIS

The proposed revisions to the NBIS are based in part on comments received to an advance notice of proposed rulemaking (ANPRM) published on September 26, 2001, at 66 FR 49154. The proposed changes address ambiguous language and clarify the following areas: Purpose; applicability; terminology; bridge inspection organization; qualifications; inspection frequency; inspection procedures; and inventory. The FHWA proposes to reformat the NBIS to place referenced definitions in one section instead of being buried throughout the regulation's narrative. The FHWA proposes to

remove the requirement that States are responsible for Federal bridges. This proposal would require Federal agencies to be directly responsible for inspection of bridges under their jurisdiction. The proposed rule language places emphasis on applicability of the standards pertaining exclusively to "highway" bridges that carry public roads.

This proposed revision would clearly delineate the responsibilities of a bridge inspection organization and define what can and cannot be delegated. This proposal would enhance and clarify the qualifications of personnel as well as inspection frequency. It proposes periodic refresher training for inspection personnel. It includes a provision for lengthening the underwater inspection interval from 60 months to 72 months under certain conditions with FHWA approval. The proposed revision would clearly define the interval for fracture critical member (FCM) inspections. The FHWA proposes to specifically address scour critical bridges, bridges vulnerable to seismic damage, and complex bridges. The FHWA proposes to establish quality control/quality assurance (QC/QA) requirements. The proposed rule also discusses procedures for follow-up on critical findings by the inspection program manager. Lastly, this action proposes to reaffirm inventory and reporting requirements including timeframes for submission of data by both the State and Federal agencies.

Section-by-Section Discussion of the Proposals

Proposed Section 650.301 Purpose

There were no comments on this topic.

The FHWA proposes to replace the section "Application of Standards" with "Purpose." The FHWA proposes to reiterate the purpose of the NBIS as stated in 23 U.S.C. 151 to address the proper safety inspection and evaluation of all highway bridges. The current bridge definition does not differentiate between the types of passageways carried; however, the term "highway" does. The FHWA proposes to re-emphasize that for purposes of the NBIS, a highway bridge is a bridge that carries a public road.

Proposed Section 650.303 Applicability

The FHWA proposes to replace the section "Inspection Procedures" with "Applicability." The FHWA proposes to clarify that the NBIS only applies to highway bridges that carry public roads.

The Minnesota DOT requested discussion about the responsibility of private bridge owners to comply with the NBIS. Collins Engineers, Inc. indicated that the NBIS should be extended to all bridges whether publicly or privately owned.

The FHWA acknowledges that some confusion has existed about the applicability of the NBIS to privately owned highway bridges. While 23 U.S.C. 151 states that the NBIS are for all highway bridges, the FHWA has no legal authority to require privately owned bridge owners to inspect and maintain their bridges. While the FHWA does not have the authority to compel the States to inspect private bridges, the FHWA strongly encourages that private bridge owners follow the NBIS as the standard for inspecting privately owned bridges. Because of the seamless nature of the transportation infrastructure within many States, the motoring public does not know the difference between a privately owned and publicly owned highway bridge. This being the case, it is extremely important that privately owned highway bridges be inspected to a nationally recognized standard. Private bridge owners that do not inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. State transportation departments that do not cause private bridge owners to inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. States and Federal Agencies should encourage owners of privately-owned highway bridges to inspect their bridges in accordance with these NBIS or reroute any public highways away from such bridges if NBIS inspections are not conducted.

The National Bridge Inventory (NBI) lists roughly 2,200 privately owned highway bridges in some 41 States and Puerto Rico. However, the total number of privately owned bridges is unknown because the States are not required to report them to the FHWA. Many privately owned bridges can be assumed to carry public roads, some of which are significant highways. The FHWA does not know if privately owned bridges are inspected using the NBIS or other standard and the FHWA does not know the level to which privately owned bridges are maintained. As a result, the FHWA cannot determine whether the public may be at risk when crossing a privately owned bridge.

Public authorities, must follow the NBIS for all highway bridges located on all public roads. The term "public road" is defined in 23 U.S.C. 101(a)(27) as "any road or street under the jurisdiction of and maintained by a public authority and open to public travel." The NBIS applies to seasonally or periodically opened public roads and to limited access public access roads.

Highway bridges owned by Indian tribes are in a separate category. Indian tribes as sovereign nations, have a unique government-to-government relationship with the Federal government. There is no explicit requirement in 23 U.S.C. 144 that requires inventory of tribally owned bridges. Likewise, there is no explicit requirement in 23 U.S.C. 151 that requires inspection of tribally owned bridges. Absent such clear language, the FHWA has no legal authority to require federally recognized Indian tribes to inventory tribally owned bridges or to comply with the NBIS. While the FHWA does not have the authority to compel the federally recognized Indian tribes to inspect tribally owned bridges, the FHWA strongly encourages that Indian tribes follow the NBIS (23 U.S.C. 151), as the standard for inspecting tribally owned bridges, particularly those open to public travel. Indian tribes that do not inspect their bridges to the NBIS can open themselves to liability for deaths or injuries because of bridge failure.

The FHWA recognizes that the NBIS does not apply to federally owned bridges on roads that are used only by public employees and not open to the general public. These bridges and administratively used roads support behind-the-scenes operations, are used by public employees engaged in official business, and are not open to the general public. While the NBIS does not apply to such bridges, these bridges need to be periodically inspected to assure the safety of public employees, contractors, official visitors and the motoring public which may inadvertently use these facilities. The public looks at the transportation infrastructure as seamless and may not know that they have driven on an administratively used road. Furthermore, public authorities could be liable for injuries or death resulting from the use of bridges that are not properly and systematically inspected and maintained.

The Michigan DOT and Collins Engineers, Inc. were concerned about the applicability of the NBIS to railroad and pedestrian bridges over public roads. The Wisconsin DOT thought sign support structures, high mast lighting, retaining walls, and noise barrier structures should be addressed, in the NBIS. Collins Engineers, Inc. thought railroad bridges and overhead traffic signs should be addressed in the NBIS.

The FHWA proposes to clarify that 23 U.S.C. 151 applies only to highway bridges; therefore the NBIS does not apply to bridges that carry only pedestrians, railroad tracks, pipelines, or other types of non-highway passageways. The FHWA would continue to strongly encourage public authorities or bridge owners to inspect these non-highway carrying bridges and other significant structures. Similarly, the FHWA believes that the NBIS does not apply to inspection of sign support structures, high mast lighting, retaining walls, noise barriers structures, railroad bridges and overhead traffic signs. Public authorities have an obligation to the motoring public to periodically inspect and maintain these facilities. Likewise, non-public authorities including utility companies, railroads, and private owners who may own these facilities, must periodically inspect and maintain their structures for the safety of the motoring public.

The FHWA would continue to emphasize some minimal inventory requirements that apply to non-highway bridges over certain highways. These requirements are described in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" [1] and need not be mandated in the NBIS.

Proposed Section 650.305 Definitions

The FHWA proposes to replace the section "Frequency of Inspections" with "Definitions." The FHWA proposes to include all definitions that are used within the NBIS in one section at § 650.305. This proposal would add clarity to the regulation and would provide a convenient reference for the commonly used terms.

The following terms used in the current regulation would be relocated to this section: (1) American Association of State Highway Transportation Officials (AASHTO) Manual," [2] (2) bridge, and (3) National Institute for Certification in Engineering Technologies (NICET). The FHWA also proposes to update the address for AASHTO and NICET, to reflect their current addresses.

To ensure that there is a common understanding of bridge inspection terms within the NBIS, the following new terms would be added to this section: (1) Bridge inspection experience; (2) "Bridge Inspector's Reference Manual, 2002", (formerly Bridge Inspector's Training Manual/90); (3) complex bridge; (4) comprehensive bridge inspection training, (5) damage inspection; (6) fracture critical inspection; (7) fracture critical member; (8) hands-on; (9) in-depth inspection; (10) initial inspection; (11) legal load; (12) load rating; (13) operating rating; (14) program manager; (15) routine inspection; (16) routine permit load; (17) scour; (18) scour critical; (19) special inspection; (20) team leader; and (21) underwater inspection.

The Virginia DOT, suggested that changes to the bridge definition might be appropriate to exclude certain minor structures from the inspection requirement. The majority of commenters did not want the definition changed, expressing concerns such as possible adverse economic impacts and conflicts with established State laws. The Advocates wanted to include all structures that can reasonably be said to perform bridge functions and thought that the FHWA adopted the AASHTO bridge definition without serious discussion or debate and without compiling an independent record to support the definition.

The FHWA adopted the AASHTO definition for "bridge" very early on in the National Bridge Inspection Program. The FHWA proposes to continue to adopt the AASHTO definition of a bridge. Title 23, U.S.C., section 151 directed the Secretary to establish national bridge inspection standards in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals. According to the National Bridge Inventory (NBI), roughly 278,000 bridges or 47 percent of the bridge inventory is owned and operated by State transportation departments. Similarly, county governments own approximately 231,000 bridges or 39 percent of the NBI. This makes the States and counties the major stakeholders in the National Bridge Inspection Program. The State transportation departments report on all highway bridges within their State regardless of ownership, except for certain Federal bridges. This data is reported every April to the NBI. Based on 23 U.S.C. 151 direction, the FHWA has developed a close working relationship with the States on bridge related issues. This consultation with the State transportation departments through the AASHTO Highway Subcommittee on Bridges and Structures, convinced the FHWA to adopt the AASHTO definition of bridge that has been used since the NBIS was first drafted. This subcommittee is chaired by a State transportation official with voting representatives from each State, the District of Columbia and Puerto Rico. The subcommittee's Secretary is a FHWA official and the subcommittee has active FHWA participation. The development of the AASHTO Manual for Condition Evaluation of Bridges, which is referenced in the current NBIS, was sponsored by AASHTO, in cooperation with the FHWA.

While we exclude bridges 20 feet and less in length, public authorities and private bridge owners are strongly encouraged to periodically examine and also maintain those bridges less than 20 feet in length to an adequate standard. The existing definition for "bridge" has served the public for over 30 years to identify which structures should be inspected and this definition is well understood and accepted, as evidenced by the statements of a majority of the commenters. There is no compelling reason to change it. To expand the inventory to include a larger number of structures may result in redistributing limited resources from inspection of larger, more critical structures, to inspection of these shorter structures thereby reducing the overall safety of the inventory.

The National Bridge Inspection Program is established to provide safe bridges. The Highway Bridge Replacement and Rehabilitation Program (HBRRP) is established to provide Federal funding to the States for bridges. Congress establishes the total level of HBRRP funding, and adding bridges to the inspection inventory would dilute funds currently available for longer, more critical structures. While the HBRRP primary focus is on bridge rehabilitation and replacement needs, bridge inspection is an eligible activity under this program. For those States that use HBRRP funds to support their bridge inspection programs, any increase in the number of highway bridges to be inspected would further reduce funds available for rehabilitation and replacement needs and thus impact bridge safety. The NBI is one tool used by the HBRRP to apportion funds to the States fairly, and expanding the inventory would have an uncertain effect on the funding apportionment. Though the inspection program provides data for the NBI, and though the NBI is a useful tool for funding purposes and for many other non-safety applications, the FHWA believes that

[1] The "Recording and Coding Guide for Structure Inventory and Appraisal of the Nation's Bridges," December 1995, Report No. FHWA–PD–96–001, is available electronically at the following URL: *http://www.fhwa.dot.gov//bridge/mtguide.doc* and may be inspected and copied as prescribed in 49 CFR part 7.

[2] The AASHTO Manual refers to the Manual for Condition Evaluation of Bridges, 1994, 2nd Edition and is available from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001.

the inspection standards should focus on bridge safety separately without complicated ties to the considerations of the HBRRP.

The proposed definition of "Program Manager" in § 650.305, lists three overall responsibilities (*i.e.*, inspecting, reporting or inventory), which could be supervised by one or more individuals. By using the word "or" connecting those three responsibilities in the definition, the FHWA intends to indicate that each of the individuals who supervise one or more of those overall responsibilities must meet the minimum qualifications of the Program Manager. Therefore, in any organization, there may be several individuals meeting those requirements.

Proposed Section 650.307 Bridge Inspection Organization

There were no comments on this topic.

The FHWA proposes to replace the section "Qualifications of Personnel" with "Bridge Inspection Organization." The FHWA stewardship of the National Bridge Inspection Standards (NBIS) program over the years has shown that some States have not exercised sufficient control over delegated local agencies to assure compliance with the NBIS. The proposal, in general, is intended to clarify and describe bridge inspection program responsibilities, organizational requirements, and delegation requirements as well as expand on what is currently provided in § 650.303(a).

In § 650.307(a), the FHWA proposes to clarify the bridge inspection responsibilities of the States. The State transportation department is responsible for the inspection, reports, load ratings and other requirements of the NBIS for all non-Federal and non-tribal bridges within a State, regardless of public authority ownership. A public authority delegated with the authority by the State to inspect bridges could jeopardize State compliance with the NBIS if it fails to properly comply with the inspection standards. Therefore, although a State may delegate the authority to inspect, it is ultimately the State's responsibility to ensure compliance with the NBIS. As such, the FHWA proposes to clarify that delegation does not relieve the State transportation department of any of its responsibilities under the NBIS.

The FHWA also proposes to relieve States of responsibilities for bridges owned by Federal agencies. This would bring NBIS into line with current procedures followed by the FHWA and other Federal agencies.

Proposed § 650.307(b) lists the bridge inspection responsibilities of Federal agencies. The inspection, reports, load ratings and other requirements of the NBIS for all Federal bridges within the respective Federal agency's jurisdiction is the responsibility of that specific agency.

The inspection of jointly owned State border bridges is the responsibility of all owning bordering States and/or Federal agencies. The FHWA proposes that agreements for the delegation of border bridge inspections, reports, load ratings and other requirements of the NBIS to be in accordance with the requirements of § 650.307(d).

Proposed § 650.307(c) describes basic bridge inspection program organization requirements. State transportation departments and Federal agencies would be required to be organized with a unit or units that are responsible for setting statewide or Federal agency wide bridge inspection program policies and procedures, assuring quality inspections are performed throughout the State or agency, and maintaining the State bridge inventory. Most States, but not all, have such an organizational unit or units, usually located in the central office, that perform some or all of these activities. In order to improve inspection program consistency and uniformity, the FHWA proposes to require that all of these activities be performed at a statewide or Federal agency wide organizational level of the State transportation department or Federal agency. This section does not preclude the activities described from being assigned to a qualified consulting engineering firm.

Proposed § 650.307(d) describes specific requirements for the delegation of bridge inspections, reports, load ratings and other requirements of the NBIS to "public authorities" within the State. The States would continue to be able to delegate the authority to perform bridge inspection activities; however, the overall program responsibility could not be delegated. Some States currently delegate some or all bridge inspections, reports, load ratings and other requirements of the NBIS to local agencies by authority under State law or written agreements that clearly state in writing the roles of all agencies and entities involved. However, other States delegate bridge inspections without any such State laws or agreements. This section proposes to require States that choose to delegate bridge inspections, reports, load ratings and other requirements of the NBIS, to do so by State law or by written agreement. States and delegated agencies will be required to keep these agreements on file.

The FHWA proposes that the requirement to establish a bridge inspection organization responsible for Statewide or Federal agency wide bridge inspection policies and procedures, quality assurance, and bridge inventory activities of proposed § 650.307(c)(1) could not be delegated.

As with other State administered Federal-aid programs under title 23, U.S. Code, delegation of bridge inspections, reports, load ratings and other requirements of the NBIS must be accompanied by appropriate State transportation department oversight.

Proposed § 650.307(e) would clarify that each organizational unit with the responsibilities identified in paragraph (c) of this section must be led by a person meeting the qualifications of a program manager as defined in the proposed § 650.309. The current NBIS is vague about what organizational units this qualification applies to. This clarification pertains to the individual in charge of each organizational unit involved in bridge inspections, reports, load ratings, and other requirements of the NBIS, including organizational units of delegated agencies. For example, the program manager qualifications would apply to a State district that has the organizational responsibility for bridge inspections and reports, as well as to a town with only one bridge that has been delegated the authority for bridge inspections and reports.

Proposed Section 650.309 Qualifications of Personnel

The FHWA proposes to replace the section "Inspection Report" with "Qualifications of Personnel." In this section, the FHWA proposes the minimum qualifications required for a program manager, a team leader, an underwater bridge inspector, and the individual for determining load ratings for bridges. Additionally, this section proposes to require refresher training for program managers and team leaders.

Six commenters to the docket affirmed the need to clarify the phrases "individual in charge," "responsible capacity," and "qualified for registration." The Massachusetts DOT recommended that the term "qualified for registration" be removed from the regulation. The Minnesota DOT stated that the phrase "responsible capacity" did not need further clarification.

The FHWA concurs that the phrases "individual in charge," "responsible capacity," and "qualified for registration" need further clarification. Accordingly, the following changes are proposed in paragraph (a):

1. The individual in charge would be identified as a "program manager" and

a definition of this person provided in § 650.305. The proposed definition was developed to clarify that this individual provides overall supervision and is available to inspection team leaders to provide guidance. A State or Federal organization can have multiple program managers, depending on the organizational structure and delegation of duties.

2. The phrase "responsible capacity" would be clarified as "bridge inspection experience." A definition for "bridge inspection experience" is provided in § 650.305. Emphasis has been placed on active participation in bridge inspection activities. The intent is to ensure that the predominant amount of experience is acquired through direct involvement in bridge inspection activities. States and Federal organizations may choose to develop additional experience criteria that consider aspects, such as, number and types of structures inspected.

3. The criteria to be qualified for registration as a professional engineer (PE) in current § 650.307(a)(1) would be removed. The term "qualified for registration" has been interpreted to mean that an individual satisfies the education and experience requirements for professional registration, but has not obtained the license. Another interpretation has been that an individual has successfully passed the professional engineer's exam and is awaiting issuance of his/her official license. The FHWA proposes in § 650.309(a)(1) that registration as a PE is the necessary requirement for someone with the responsibilities of a "program manager," as an equivalent alternate to ten years of bridge inspection experience.

The majority of commenters were in favor of establishing bridge inspection training and experience requirements for the individual in charge of the bridge inspection and inventory program. Sixteen commenters noted that having a civil or structural related engineering degree, an Engineer-In-Training (EIT) certificate, or a Professional Engineer's (PE) license should count towards an experience requirement. The majority of those in favor of establishing a training requirement recommended that the person in charge be required to complete the same training as regular bridge inspectors. The majority of commenters were in favor of requiring a specific discipline for the PE of the person in charge. Civil/structural were the most commonly recommended disciplines. Many commenters thought that the laws governing professional engineering licensing within each State ensure that PE's only practice engineering in the fields in which they are qualified and experienced. A private citizen, Marc S. Grunnert, noted that years of experience might not be as important as exposure to different types of structures or the number of structures inspected over a given period of time. The ARTBA and the Florida DOT noted that States should be allowed a great deal of latitude in making personnel decisions and judgment calls with respect to qualifications.

The FHWA recognizes the majority of commenters recommended that the NBIS specify the engineering license discipline for the program manager who is a PE, preferably in civil or structural engineering. However, the FHWA concurs with the minority of commenters who indicated that the laws governing licensing within each State or Federal organization ensure that PE's only practice engineering in the fields in which they are qualified and experienced. Furthermore, the FHWA believes that it is the State or Federal organization's responsibility to ensure that those individuals involved in the bridge inspection program meet the minimum qualifications defined in the NBIS. The proposed regulations would not specify the engineering discipline; however, individual States and Federal organizations can adopt requirements that are more specific than the minimum requirements established by the NBIS.

References to the "Bridge Inspector's Training Manual" would be removed in the proposed regulation. A definition of "comprehensive bridge inspection training" which mentions the "Bridge Inspector's Reference Manual (BIRM)" [3] would be added in the proposed § 650.305.

Commenters were almost evenly divided on the need to require certification training in proportion to the complexity of the structure being inspected. Seven of the commenters who were opposed to adding this requirement, supported the idea that both level of training and experience should be considered, particularly for the inspection of complex structures. Several commenters stated that this should be a responsibility of the bridge inspection program manager and does not need to be codified in regulation. The New Jersey, New York, North Carolina and Florida DOT's along with a private citizen, Omaha Greene, noted that it would be very difficult to administer a program where the training and experience requirements varied with the complexity of structures.

The FHWA agrees that program managers must have the same basic level of training as all other bridge inspectors. A requirement is proposed in § 650.309(a)(2) for the program manager to have successfully completed a comprehensive bridge inspection training course. The FHWA proposes to define comprehensive bridge inspection training in § 650.305. This requirement would apply regardless of whether the program manager is a PE or has ten years of bridge inspection experience. The FHWA proposes to allow 12 months for new or current program managers who have not participated in the training to complete the required comprehensive training. In proposed § 650.309(a)(2), States and Federal organizations would be permitted to develop their own comprehensive inspection training programs subject to approval by the FHWA. The FHWA will use the proposed comprehensive bridge inspection training definition and the BIRM as criteria to apply when reviewing these programs.

The "individual in charge" of a bridge inspection team in current § 650.307(b) would be identified as a "team leader" in § 650.309(b) and a definition of this person provided in § 650.305. The California DOT, and two private citizens, Omaha Greene and Rick Jager, recommended that an additional, alternate team leader qualification be added for those who possess an EIT certificate, have two years bridge inspection experience, and have completed an 80-hour training course based on the bridge inspector's training manual (BITM). The FHWA agrees with the comments regarding the consideration of engineering degrees and PE licensing status in evaluating an individual's experience level. Accordingly, the FHWA proposes the addition of an alternate qualification in § 650.309(b) that a "team leader" have a bachelors degree in engineering and have successfully completed the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering examination, and have two years of bridge inspection experience. Additionally, team leaders would also have to complete a comprehensive bridge inspection training course.

There are approximately 84,500 bridges or 14 percent of the NBI that are posted in virtually every State, the District of Columbia and Puerto Rico. Bridge load rating calculations provide the basis for determining the safe load capacity of a bridge and critical load posting and permitting decisions are

[3] The Bridge Inspector's Reference Manual (BIRM), 2003, FHWA–NHI–03–001, may be purchased from the U.S. Government Printing Office bookstore, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

also based on load rating calculations. Therefore, the FHWA would like to ensure that qualified engineers determine these load ratings. The AASHTO "Manual for the Condition Evaluation of Bridges," states that the individual charged with overall responsibility for determining load ratings of bridges should be a PE. Although we did not receive any comments regarding the need to establish qualifications for this individual, the FHWA believes it is important to outline the qualifications. Therefore, consistent with the AASHTO Manual, the FHWA proposes to require that the individual responsible for determining load ratings of bridges shall be a registered PE in § 650.309(c). The FHWA also proposes to define the term "load rating" in § 650.305.

The Bureau of Indian Affairs, the Michigan and Pennsylvania DOT's, and the Advocates recommended that a requirement for periodic bridge inspection refresher training be established and incorporated in the regulation. The recommended frequency of this training varied from one to eight years.

The FHWA concurs with the comments regarding the need for periodic refresher training. A requirement for refresher training every five years for all program managers and team leaders is proposed in § 650.309(d). The refresher training will assist in maintaining the skills and knowledge level needed to perform accurate and thorough bridge inspections in a consistent manner as technology, materials, bridge designs, and available tools change. The National Highway Institute (NHI) currently offers a FHWA approved bridge inspection refresher training course.[4] Other refresher training could be developed by a State or Federal organization, subject to the FHWA approval.

The Michigan DOT stated that specific requirements relative to an inspector's physical characteristics, such as vision and mobility, should not be addressed in the regulation.

The FHWA agrees with the comment that vision, mobility, and other physical characteristic requirements do not need to be addressed within the regulations. As stated above, State and Federal organizations are responsible for evaluating the qualifications of those involved in the bridge inspection program. The need for good vision and physical mobility are important in the performance of many bridge inspection activities, particularly since the most frequent method of nondestructive evaluation is visual and access to elements of most bridges requires climbing and other physical performance. States and Federal organizations are strongly encouraged to consider these characteristics when evaluating qualifications of bridge inspection personnel.

The Massachusetts, Connecticut, and South Dakota DOT's, the Advocates, and Collins Engineers, Inc., stated that minimum training requirements should be established for all bridge inspection team members.

Based on comments from the Massachusetts, Connecticut, and South Dakota DOT's, the Advocates, and Collins Engineers, Inc., the FHWA considered the establishment of minimum qualifications for bridge inspection team members who are not team leaders. Given that a qualified team leader must be on site during the inspection and that many organizations use seasonal helpers, we decided that this is a personnel issue that should be addressed at the State or Federal agency organization level.

The majority of commenters were not in favor of establishing a requirement that those performing underwater bridge inspections be licensed professional engineers (PE). Those who were opposed to this requirement felt that the supply of licensed PE divers would not be sufficient to meet the demand, resulting in significantly higher costs of underwater inspections without a corresponding benefit. Proponents for requiring that underwater bridge inspectors be licensed PEs reasoned that there is a sufficient cadre of licensed PE divers and that costs for such would be competitive with non PE divers and would provide for a much better product. Also, many commenters indicated support for requiring that a PE be present during the underwater inspection. Commenters also stated that the regulation should establish the same qualifications for both above and below water inspectors, noting that diving is merely a means of transportation.

The FHWA concurs with the commenters who were not in favor of requiring that those performing underwater bridge inspections be licensed PEs. Currently, the NBIS does not have a requirement for the qualifications of underwater bridge inspectors. Because the desired qualifications of such personnel vary with the complexity of the bridge, the FHWA proposes § 650.309(e) to require at a minimum that all underwater inspection divers who are not fully qualified as program managers or team leaders must complete a comprehensive bridge inspection training course. This requirement would help to ensure that a properly trained inspector, who does not necessarily have to meet team leader qualifications, performs the inspection in those instances when direct observation by a team leader is not possible. At a minimum, a qualified team leader must be on-site during the underwater inspection. The importance of having a qualified team leader on site during the underwater inspection cannot be overemphasized, and is proposed as a requirement under § 650.313(b).

The Association of Diving Contractors International, Inc. noted that in order to be compliant with the Occupational Safety and Health Administration's (OSHA) regulations contained in 29 CFR part 1910, subpart 7, dive team members must meet qualifications that require appropriate commercial diver training.

The FHWA position on this issue would be that in addition to having appropriate bridge inspection training, those personnel who participate as bridge inspection dive team members must meet minimum diver qualifications that entail training as a professional diver. Those qualifications should meet or exceed OSHA and/or industry safety standards and should be established by the "Bridge inspection organization" and need not be mandated in the NBIS. By giving the "Bridge inspection organization" the latitude to establish diver qualifications including training for its organization, the "Bridge inspection organization" may choose to establish diver qualification and training that exceed OSHA and/or industry standards. States and Federal organizations are strongly encouraged to consider stringent bridge inspection dive team member qualifications for the conduct of safe diving operations in support of bridge underwater inspections.

Proposed Section 650.311 Inspection Frequency

In this section, the FHWA examines inspection frequency and how an NBI of roughly 590,000 bridges should be inspected to assure the safety of the motoring public.

The majority of the commenters thought that the maximum inspection interval of 4 years for certain structures is reasonable and should not be extended; the remaining commenters said that 6 to 10 years may be appropriate for some low-risk structures. The majority of commenters stated that the maximum inspection cycle for most structures should remain at 2 years.

[4] Information regarding NHI training can be obtained at the following URL: *http//www.nhi.fhwa.dot.gov.*

Additional responses included 13 commenters who stated that the FHWA approval process should be revisited to include additional structure types, and/or be made simpler or automatic for certain groups of low-risk structures. Several commenters stated that the 2 year frequency should be clarified. The ARTBA, Florida DOT, National Association of County Engineers (NACE), and Alcona County (Michigan), stated that there should be a grace period (30 to 90 days) for each cycle to account for such things as staffing and weather problems. The Wisconsin DOT suggested a calendar year approach so that inspections may be moved to any time of a calendar year to monitor structures during various weather conditions.

The FHWA proposes to replace the section "Inventory" with "Inspection Frequency." Based on the NBI, there are approximately 561,000 bridges that are inspected on a 2-year cycle (*i.e.*, biennial routine inspections). The FHWA concurs with the majority of commenters, and proposes in paragraph (a) of this section, that the maximum inspection cycle should remain at 4 years (48 months) for certain structures, and that the maximum inspection cycle for most structures should remain at 2 years (24 months). The FHWA also proposes to include a definition for "routine inspection" at § 650.305.

There are roughly 27,000 bridges or 4.7 percent of the NBI that are inspected on a 4-year inspection cycle. According to the NBI, there are 32 States using the 4-year inspection cycle. The FHWA recognizes the concerns of those commenters that suggest there should be a modified approval process and/or automatic approval of some low risk structures for the 4-year inspection cycle. However, the FHWA thinks it remains necessary at this time to retain a central approval process for the 4-year cycle to minimize risk to the traveling public. Subject to bridge safety, approvals will continue to be made on a case-by-case basis, and consideration will be given to unique and specific conditions identified in order to provide maximum flexibility to each requestor.

Regarding the commenters who suggested there should be an inspection "grace period," the FHWA proposes to retain and more clearly define the current 30-day grace period. It is thought that if a longer period were granted, it could be applied for several subsequent cycles, which could have an adverse impact on safety.

The majority of commenters stated that it would be reasonable to increase the underwater inspection interval beyond 4 years for certain structures based on factors such as foundation type and materials, water quality and velocity, substructure material and condition. The majority of commenters also thought the current 5-year interval was appropriate for most structures. The New Jersey DOT, Department of the U.S. Navy and William Hovell, a private citizen, stated that the maximum interval for most structures should be reduced to 4 years to increase safety and to gain efficiency by conducting these inspections on a multiple of the "routine inspection" cycle. Several other commenters suggested that any increase in maximum frequency proposed by the FHWA should be an even-year cycle to coincide with routine inspection cycles.

With the April 1987 collapse of New York's Schoharie Creek bridge, national attention turned to underwater inspection. According to the NBI, there are roughly 47,000 bridges or 8 percent of the inventory that require underwater inspection in some 49 States, the District of Columbia and Puerto Rico. The FHWA concurs with the majority of commenters, and proposes at § 650.311(b), that the current 5-year (60 month) underwater inspection interval be maintained. Some commenters wanted a separate interval for underwater inspections from above water inspections that are conducted biennially. The FHWA continues to believe that the 5-year underwater inspection interval is a valid interval for the underwater inspection of a bridge pier and abutment substructures based on engineering judgment and review of NBI data.

The FHWA proposes to add the option for States to apply for a 72 month underwater inspection interval for certain bridges. In proposing the 72 month interval, the FHWA believes that applying engineering judgment and approval on a case-by-case basis to bridges with little or no change from inspection cycle to cycle in benign environments provides an adequate margin of safety to the motoring public. Industry standards, such as those provided by the American Society of Civil Engineers (ASCE) in their "Underwater Investigations Standard Practice Manual, 2001," [5] promote a degree of latitude in the maximum interval between routine underwater inspections up to 6 years. The guidance they provide is tied to material, environment, scour and condition rating from previous inspections. While we are proposing an additional year beyond the current 60 month underwater inspection interval, we are taking into consideration these same factors of material composition (timber, steel, concrete, protected or unprotected steel or timber, composite), environment (benign or aggressive), scour (susceptibility to scour) and previous condition rating (excellent to failed). Based on our assessment, again on a case-by-case basis, the FHWA may approve requests not to exceed 72 months. This authorization can be rescinded at any time owing to structural degradation, adverse change in environment and presence of localized bridge scour. An example of a situation that may warrant an extended interval may include a highway bridge with concrete piles with no degradation over a lined irrigation canal carrying fresh water. An example of a situation that would not warrant approval would be a highway bridge over a high flow saltwater or brackish water environment, with structural piles showing degradation and subject to localized scour.

Four-year frequencies may be used, if desired, but retention of the 60 month frequencies allows more flexibility to program managers. The FHWA also proposes to include a definition for "underwater inspection" at § 650.305.

Omaha Greene, a private citizen, and the Colorado and Oregon DOTs, stated that a firm inspection interval should be established for fracture critical member (FCM) inspections, and the first two of these three commenters thought the maximum interval should be 2 years.

Based on the NBI, there are approximately 14,000 bridges or 2.4 percent of the bridge inventory that require fracture critical member inspections in some 49 States, the District of Columbia and Puerto Rico. The FHWA agrees with these commenters, and proposes at § 650.311(c) that FCM inspections be conducted at intervals not to exceed 24 months, but that utilization of in-depth inspection and testing methods may exceed 24 months as outlined in an FCM Plan developed by the program manager. The FHWA also proposes to include a definition for "fracture critical inspection" and "fracture critical member" at § 650.305.

Many commenters indicated that the level to which individual bridges should be inspected depends on a variety of factors that should be evaluated by the individual in charge of the inspection program.

The FHWA proposes at § 650.311(d) to provide the program manager with the discretion to determine the level and frequency of these inspections to

[5] This document may be obtained from ASCE, 1801 Alexander Bell Drive, Reston, Virginia 20191–4400.

address damage, in-depth, and special inspections. The FHWA also proposes to define "damage," "in-depth," and "special" inspections in § 650.305.

Proposed Section 650.313 Inspection Procedures

The Oklahoma DOT, and Collins Engineers, Inc., noted that the level to which individual bridges should be inspected needed clarification. They suggested the type/depth of the inspection be determined by the individual in charge of the inspection program based on factors unique to the bridge.

The FHWA proposes to replace section "Inspection Procedures" with a revised section also entitled "Inspection Procedures." The FHWA agrees that the depth to which individual bridges should be inspected depends on such factors as age of the bridge, traffic characteristics, state of maintenance, and known deficiencies. The FHWA proposes in paragraph (a) of this section, that each bridge shall be inspected in accordance with the procedures in the AASHTO Manual. The FHWA determined that there is sufficient guidance in this manual to allow the program manager to establish the depth and type of inspections appropriate for each bridge without further direction in the NBIS.

The FHWA proposes in paragraph (b) of this section, that at least one Team Leader be present at the bridge during inspections. The Team Leader being present is an existing requirement that is being emphasized. The FHWA also proposes to include a definition for "initial inspection" in § 650.305.

The FHWA proposes to replace the current § 650.303(c) with a new paragraph (c) and discuss the requirements for load rating and bridge posting. The FHWA also proposes to include a definition for "legal load," "routine permit load," and "operating rating" at § 650.305.

The FHWA proposes to replace the current § 650.303(d) with a new paragraph (d) that would place greater emphasis on actions taken pursuant to findings during the inspection as well as requiring the State or Federal agency to maintain reports on the results of all highway bridge inspections. We are proposing at § 650.313(d) that records be maintained in the bridge file for the life of the bridge.

The Pennsylvania, Oregon and Kansas DOT's, suggested the NBIS should require element level inspections to be performed and reported. The NBI ratings are thought by some to be too general. Those State transportation department's thought the element level data would be more meaningful to bridge owners for programming work. Those State transportation departments requested the annual submittal of NBI data should be made using element level bridge inspection data.

The FHWA recognizes that element level data is more meaningful to bridge owners for programming work, and that the element level data can be converted for Federal use. The FHWA agrees it would be desirable to work toward that goal for the future. However, a significant amount of additional testing of the conversion program and development of apportionment calculations is needed.

The Virginia DOT suggested the NBIS be expanded to promote both safety and maintenance evaluations. It felt States were already doing this as part of the inspection process, and that it should be a regulatory requirement.

The FHWA agrees that safety and maintenance evaluations should be conducted along with the NBIS inspections. The need for safety and maintenance inspections is already emphasized sufficiently in the AASHTO and the Bridge Inspector's Reference Manuals, and need not be mandated in the NBIS.

The Massachusetts DOT requested the NBIS contain a better definition of what is meant by "unique or special feature." The NBIS requires that master lists of such structures be kept; however, this is difficult to do if it is not clear what falls under this definition. It was also suggested that procedures and manuals be developed for the inspection of segmental, cable-stayed and suspension bridges as well as procedures for underwater inspection of bridges and the creation of a diver's manual, similar to the "Bridge Inspector's Training Manual (BITM)."[6] The Advocates believe the requirements for listing of fracture critical and unique bridge features are appropriate. However, the Advocates believe underwater elements should be considered part of the bridge and also receive similar inspection priority.

The FHWA agrees that the NBIS should define what is required in these master lists. Accordingly, the FHWA proposes at § 650.313(e): to require the program manager to maintain only specific lists of fracture critical bridges, bridges requiring underwater inspection, scour critical bridges, and bridges subject to seismic damage.

In paragraph (f), the FHWA proposes to replace § 650.303(l). This proposed section would require the State or Federal agency to prepare an inspection plan for inspecting the fracture critical bridges.

In paragraph (g), the FHWA proposes to replace § 650.303(l)(2). This proposed section would require the State or Federal agency to prepare an inspection plan for inspecting bridges requiring underwater inspections. The plan would take into account the importance of underwater elements and contain procedures based on the risk of failure, as evaluated in the scour analysis required in paragraph (h).

In paragraph (h), the FHWA proposes to include requirements for action plans and inspection of scour critical bridges. There are roughly 20,600 bridges or 3.5 percent of the NBI that are identified as being scour critical in virtually all States and Puerto Rico. This proposed section would require the State or Federal agency to prepare a plan to monitor and/or correct deficiencies for scour critical bridges. The FHWA also proposes to include a definition for "scour" and "scour critical" at § 650.305.

In paragraph (i), the FHWA proposes to discuss inspection of bridges vulnerable to seismic damage and would require the State or Federal agency to establish a seismic damage vulnerability program as well as a plan to correct deficiencies in the bridge.

The FHWA agrees that the NBIS should contain a better definition of what is meant by "unique or special feature." Accordingly, the following changes are proposed at § 650.313(j):

1. A new category of "complex" bridges would be established with a more specific definition of applicable bridge types.

2. An inspection plan would be required for each of the bridges falling in the "complex" category. Complex bridges would then be inspected in accordance with the plan.

3. The FHWA also proposes to include a definition for "complex bridge" at § 650.305.

The Pennsylvania and Connecticut DOT's suggested a formal quality assurance (QA) program be required to verify inspection findings. The Oregon and South Dakota DOT's suggested that the QA provisions were enforced differently in each State and asked that the QA requirements be clarified. The specific reference to the Federal code requiring performance of the quality assurance/quality control (QA/QC) of the bridge inspection program should be clarified.

The FHWA agrees that the regulation should specifically require QA/QC of the bridge inspection program.

[6] The BITM/90 has been replaced with the Bridge Inspector's Reference Manual (BIRM), 2003, FHWA–NHI–03–001.

Accordingly, the following changes are proposed at § 650.313(k):

1. A new provision would be added to the NBIS that requires States to implement a systematic quality control and quality assurance program;

2. No specific requirements would be given, but general guidelines would be provided to require the program to include periodic field review of inspection teams and their work to ensure uniformity and completeness and to review inspection reports and load rating computations; and

3. The program would be required to be submitted to the FHWA for approval. This would allow the FHWA to work closely with the States to develop and implement these programs.

The Oregon DOT suggested that the FHWA amend the NBIS to strengthen the need for critical follow-up and define what structures are required to be included. Additionally, the commenter requested that the FHWA clearly indicate a requirement for each State to initiate a process to follow-up on critical findings.

The FHWA evaluated the need to strengthen the follow-up on critical findings and specify what structures are required to be included. The following changes are proposed at § 650.313(l):

1. A new provision would be added in the NBIS to require States to establish a critical follow-up program;

2. The FHWA proposes to require that States notify the FHWA of actions taken to assure public safety in response to the critical findings reported by the inspectors; and

3. The FHWA believes it is not appropriate to establish a nationwide definition of the criteria for which bridges should be included in the critical follow-up program. The FHWA proposes to allow the States the discretion, in cooperation with the FHWA, to define the criteria.

Proposed Section 650.315 Inventory

Almost all comments received indicated that the NBIS reporting requirements were reasonable and need not be changed. The Florida DOT indicated that the States should be relieved of the requirement to maintain data on Federal agency bridges in its State. The Delaware DOT commented that the FHWA should not be concerned with the 90 or 180 days requirement that the State, Federal agency or other bridge owner has to enter new or changed data into their inventory.

The FHWA proposes a "§ 650.315 Inventory" to replace the current "§ 650.311 Inventory." In paragraph (a), the FHWA proposes to add language requiring Federal agencies to be responsible for the inspection, inventory and reporting of data regarding bridges under their authority/control. The FHWA feels that this will ensure the best representation of the bridges owned by the Federal agencies. This practice has been in place since 1995 and the language will reflect the current practice. Since the Federal agencies have been inventorying and reporting their own bridges, the number of federally owned bridges has grown from just over 4,000 to over 7,000 bridges. The FHWA also proposes in paragraph (a) to add language that will accommodate future changes/updates to the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," December 1995 (the Guide). The FHWA feels that this will clarify that the most current version of the Guide is to be used in instances where updates will be made to the Guide.

In paragraphs (b), (c) and (d), the FHWA proposes to add language that will change the time that the Federal agency has to enter new or revised data into the inventory from 180 to 90 days from change in bridge status, bridge load restriction, bridge closure status or bridge inspection. The FHWA feels that this aligns better with the State requirements and is in the best interest of public safety and national security. In the event of a bridge catastrophe or national or statewide emergency, the State would have on hand the most current bridge information available.

Proposed Section 650.317 Reference Manuals

There were no comments on this topic.

The FHWA proposes to create a new section entitled "Reference Manuals" to incorporate a manual, the AASHTO Manual for Condition Evaluation of Bridges (AASHTO Manual) and its 2001 interim revision. The AASHTO Manual is referred to in the current NBIS but not incorporated by reference. This manual is discussed in the proposed NBIS, and provides good guidance for the inspection and evaluation of highway bridges, and for that reason needs to be incorporated by reference.

While we are proposing to incorporate by reference the AASHTO Manual, it is important to note that the regulation on the NBIS, takes precedence over any guidance contained in the AASHTO manual. Where there may be implied or conflicting language between the two documents, the nationwide direction provided by the NBIS will always govern.

Related Rulemakings and Notices

The FHWA is also in the process of reviewing 23 CFR part 650, subpart D, Highway Bridge Replacement and Rehabilitation Program (HBRRP). The FHWA published an advance notice of proposed rulemaking for the HBRRP on September 26, 2001, at 66 FR 49152. Additionally, the FHWA published a final rule for 23 CFR part 650, subpart G, Discretionary Bridge Candidate Rating Factor on October 15, 2002, at 67 FR 63539.

For ease of reference the following distribution table is provided:

Old section	New section
650.301, first sentence	650.303 Revised, purpose added.
650.301, second sentence	650.305 Revised, definition of terms added.
650.303(a), portion of first sentence	650.307(a) and (c)(2) Revised, bridge inspection organization added.
None.	650.305 added.
Definitions:	Definitions:
650.303(a) American Association of State Highway Transportation Officials (AASHTO) Manual definition.	Revised.
Bridge	Bridge, revised.
None	Bridge inspection experience, Added.
None	Bridge inspector's reference manual, Added.
None	Complex bridge, Added.
None	Comprehensive bridge inspection training, Added.
None	Damage inspection, Added.
None	Fracture critical inspection, Added.
None	Fracture critical member, Added.
None	Hands-on, Added.

Old section	New section
None	In-depth inspection, Added.
None	Initial inspection, Added.
None	Legal load, Added.
None	Load rating, Added.
None	National Institute for Certification in Engineering Technologies (NICET), Added.
None	Operating rating, Added.
None	Program manager, Added.
None	Routine inspection, Added.
None	Routine permit load, Added.
None	Scour, Added.
None	Scour critical, Added.
None	Special inspection, Added.
None	Team leader, Added.
None	Underwater inspection, Added.
650.303(b)	605.309 Revised.
650.303(c)	650.313(c) Revised.
650.303(d)	650.313(d) Revised.
650.303(e) introduction	650.313(e) Revised.
650.303(e)(1) first sentence	650.313(f) Revised.
650.303(e)(1) second sentence	650.305 Revised.
650.303(e)(2) first sentence	650.305 Revised.
650.303(e)(2) second sentence	650.311(b)(1) Revised.
None	650.313(k) Added.
650.303(e)(4)	650.313(d) and (l) Revised.
650.305(a)	650.311(a)(1) Revised.
650.305(b)	650.311(a)(2) Revised.
650.305(c)	650.311(a)(3) Revised.
650.307(a) introduction	650.307(d) Added; 650.309(a) Revised.
650.307(a)(1)	650.309(a)(1) Revised.
650.307(a)(2) and (a)(3)	650.309(a)(2) Revised.
650.307(a)(3) Bridge Inspector's Training Manual	650.305 Bridge Inspector's Reference Manual.
650.307(b)	650.309(b) Revised.
650.307(b)(1)	650.309(b)(1) Revised.
650.307(b)(2)	650.309(b)(3) Revised.
650.307(b)(3)	650.309(b)(4) Revised.
650.309	650.313(d) Added second sentence.
650.311(a)	650.315(a) Revised.
650.311(b)	650.315(b), (c), (d) Revised.
None	650.307(c) Added.
None	650.307(c)(1) Added.
None	650.307(e) Added.
None	650.309(c) Added.
None	650.309(d) Added.
None	650.309(e) Added.
650.311(a)	650.315(a) Revised.
None	650.311(b)(2) Added.
None	650.311(b)(3) Added.
None	650.311(c) Added.
None	650.311(c)(1) Added.
None	650.311(c)(2) Added.
None	650.311(c)(3) Added.
None	650.311(d) Added.
None	650.313(a) Added.
None	650.313(b) Added.
None	650.313(g) Added.
None	650.313(h) Added.
None	650.313(i) Added.
None	650.313(j) Added.
None	650.313(k) Added.
None	650.313(l) Added.
None.	650.317 Added.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of the U. S. Department of Transportation regulatory policies and procedures. This action is considered significant because of the substantial public interest in the safety of highway bridges. It is anticipated that the economic impact of this rulemaking would be minimal since funding the inventory of bridges is provided under 23 U.S.C. 144. The Office of Management and Budget (OMB) designated this proposed regulation as a significant regulatory action and has reviewed it under E.O. 12866.

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60 l-612) the FHWA has evaluated the effects of this proposed action on small entities. Since the proposed regulatory changes are primarily directed to the States, which are not considered small entities for the purposes of the Regulatory Flexibility Act, the FHWA is able to preliminarily certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The FHWA welcomes comments on this analysis.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed 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 any one year (2 U.S.C. 1532). Funding to inventory highway bridges, as well as inventory of Indian reservation and park road bridges, is currently provided under 23 U.S.C. 144, Highway bridge replacement and rehabilitation program (HBRRP). Bridge inspection is an eligible activity under the HBRRP and Federal funding is available to the States under the HBRRP.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000. The FHWA believes that this proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Currently, the State reporting requirements related to the National Bridge Inspection Standards are covered by an existing FHWA information collection entitled Structure Inventory and Appraisal (SI&A) Sheet. The SI&A sheets are used by the States to provide to the FHWA the required information on annual bridge inspections. The current annual burden imposed on the States under this information collection is 540,000 hours. The OMB control number for this collection is 2125–0501. OMB clearance will expire on April 30, 2004.

The FHWA has determined that this proposed rulemaking would result in an additional 67,000 burden hours (12 percent increase) on the States. This is based on review of the national bridge inspection data coupled with the additional NBIS requirements this rulemaking action would impose on the States. These additional requirements include development of seismic damage vulnerability and quality control/quality assurance programs; procedures for follow-up on critical findings; State-agency agreements; and comprehensive bridge inspection training. The revised total annual burden on the States would be 607,000 hours.

The FHWA will submit to the OMB the required clearance request documents to cover the additional burden hours at the time this proposed rulemaking is published in the **Federal Register**. The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of the FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order, because although it is a significant regulatory action under Executive Order 12866 it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant Programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: September 2, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 650, subpart C, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority citation for part 650 continues to read as follows:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 315, and 319; 23 CFR 1.32; 49 CFR 1.48(b), E.O. 11988 (3 CFR, 1977 Comp. p. 117); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); section 161 of Public Law 97–424, 96 Stat. 2097, 3135; section 4(b) of Public Law 97–134, 95 Stat. 1699; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; and section 1057 of Public Law 102–240, 105 Stat. 2002.

2. Revise subpart C to read as follows:

Subpart C—National Bridge Inspection Standards

Sec.

Subpart C—National Bridge Inspection Standards

§ 650.301 Purpose.

This regulation sets the national standards for the proper safety inspection and evaluation of all highway bridges in accordance with 23 U.S.C. 151.

§ 650.303 Applicability.

The National Bridge Inspection Standards (NBIS) in this part apply to all structures defined as highway bridges located on all public roads.

§ 650.305 Definitions.

Terms used in this regulation are defined as follows:

American Association of State Highway Transportation Officials (AASHTO) Manual. "Manual for Condition Evaluation of Bridges," 1994, second edition, published by the American Association of State Highway and Transportation Officials. [A copy of the AASHTO Manual may be obtained upon payment in advance by writing to the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, DC 20001. The AASHTO Manual may also be ordered via the AASHTO bookstore located at *http://www.aashto.org/aashto/home.nsf/FrontPage.*]

Bridge. A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying vehicular traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Bridge inspection experience. Active participation in bridge inspections in accordance with the NBIS, in either a field inspection, supervisory, or management role. A combination of bridge design, maintenance, construction and bridge inspection experience, with the predominant amount being bridge inspection, is acceptable.

Bridge Inspector's Reference Manual (BIRM). A comprehensive FHWA manual on programs, procedures and techniques for inspecting and evaluating a variety of in-service highway bridges. This manual may be purchased from the U.S. Government Printing Office bookstore, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Complex bridge. Movable, suspension, cable stayed, prestressed concrete segmental, long span arches and other bridges with unusual or complex designs.

Comprehensive bridge inspection training. A minimum of 80 hours of training that covers all aspects of bridge inspection and enables inspectors to relate conditions observed on a bridge to established criteria (*see* the Bridge Inspector's Reference Manual for the recommended material to be covered in a comprehensive training course).

Damage inspection. An unscheduled inspection to assess structural damage resulting from environmental factors or human actions.

Fracture critical inspection. A detailed, visual, close-up, hands-on inspection that may include other non-destructive evaluation of fracture critical members.

Fracture critical member. A steel member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse.

Hands-on. Inspection of bridge components conducted with the inspector being within arms length of the component. Inspection is performed using visual techniques that are supplemented by nondestructive testing.

In-depth inspection. A close-up, hands-on inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures.

Initial inspection. The first inspection of a bridge as it becomes a part of the bridge file to provide all Structural Inventory and Appraisal (SI&A) data and other relevant data and to determine baseline structural conditions.

Legal load. The maximum legal load for each vehicle configuration permitted by law for the State in which the bridge is located.

Load rating. The determination of the live load carrying capacity of a bridge using bridge plans and supplemented by information gathered from a field inspection.

National Institute for Certification in Engineering Technologies (NICET).

NICET provides nationally applicable voluntary certification programs covering several broad engineering technology fields and a number of specialized subfields. For information on the NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, VA 22314–2794.

Operating rating. The maximum permissible live load to which the structure may be subjected for the load configuration used in the rating.

Program Manager. The individual in charge of the unit, that has been assigned or delegated the duties and responsibilities for bridge inspection, reporting, or inventory. The program manager provides overall leadership and is available to inspection team leaders to provide guidance.

Routine inspection. Regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. Areas of the bridge to be closely monitored based on previous inspection findings or found to be of concern during the current regular inspection must be inspected using in-depth inspection procedures, either during the current regular inspection or as a follow-up in-depth inspection.

Routine permit load. A live load, higher than the legal load, authorized to move along side other heavy vehicles on a regular basis.

Scour. Erosion of streambed or bank material due to flowing water; often considered as being localized around piers and abutments of bridges.

Scour critical. A bridge, whose foundation has been determined to be unstable for the assessed, observed or calculated scour condition.

Special inspection. An inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency.

Team leader. Individual in charge of an inspection team responsible for planning, preparing, and performing field inspection of the bridge.

Underwater inspection. Inspection of the underwater portion of a bridge substructure and the surrounding channel, which cannot be inspected visually at low water by wading or probing, generally requiring diving or other appropriate techniques.

§ 650.307 Bridge inspection organization.

(a) Each State transportation department must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the State's boundaries, except for bridges that are owned by Federal agencies.

(b) Federal agencies must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the respective agency responsibility or jurisdiction.

(c) Each State transportation department or Federal agency must include a bridge inspection organization that is responsible for the following:

(1) Statewide or Federal agency wide bridge inspection policies and procedures, quality assurance, and bridge inventory.

(2) Bridge inspections, reports, load ratings and other requirements of these standards.

(d) Each State transportation department may delegate bridge inspections, reports, load ratings and other requirements of these standards to public authorities. Delegation does not relieve the State transportation department of any of its responsibilities under this subpart. Delegation must be made according to State law or a fully executed agreement, which clearly states in writing the roles and responsibilities of all agencies and entities involved.

(e) Each organizational unit with the responsibilities identified in paragraphs (c)(1) or (2) of this section, including each organizational unit of an Agency with delegated authority to perform bridge inspections, reports, load ratings and other requirements of these standards, must be led by a program manager with qualifications defined in § 650.309.

§ 650.309 Qualifications of personnel.

(a) A program manager must possess, at a minimum, the following qualifications:

(1) Be a registered professional engineer, or have ten years bridge inspection experience; and,

(2) Successfully completed a Federal Highway Administration (FHWA) approved comprehensive bridge inspection training course prior to or within 12 months of becoming a Program Manager. Previous FHWA approved comprehensive bridge inspection training is also acceptable.

(b) A team leader must possess, at a minimum, the following qualifications:

(1) Have the qualifications specified in paragraph (a) of this section, or

(2) Have all of the following:

(i) A bachelor's degree in professional engineering from a college or university accredited by the Engineering Accreditation Committee of the Accreditation Board for Engineering and Technology (EAC/ABET);

(ii) Successfully passed the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering examination;

(iii) Two years of bridge inspection experience; and

(iv) Successfully completed a FHWA approved comprehensive bridge inspection training course, or

(3) Have five years bridge inspection experience and have successfully completed a FHWA approved comprehensive bridge inspection training course; or

(4) Be certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) and have successfully completed a FHWA approved comprehensive bridge inspection training course.

(c) The individual charged with the overall responsibility for determining load ratings of bridges must be a registered professional engineer.

(d) Program managers and team leaders must complete FHWA approved bridge inspection refresher training every five years.

(e) An underwater bridge inspection diver must complete an FHWA approved comprehensive bridge inspection training course or other FHWA approved underwater bridge inspection training course.

§ 650.311 Inspection frequency.

(a) Routine inspections.

(1) Inspect each bridge at regular intervals not to exceed twenty-four months.

(2) Certain bridges require inspection at less than twenty-four month intervals. The program manager determines the level and frequency to which these bridges are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(3) State or Federal agencies may inspect certain types of bridges at greater than twenty-four month intervals, not to exceed forty-eight months, with the FHWA's approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(b) Underwater inspections.

(1) Inspect underwater structural members at regular intervals not to exceed sixty months.

(2) Certain underwater structural members require inspection at less than sixty month intervals. The program manager determines the level and frequency to which these members are inspected considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections and known deficiencies.

(3) State or Federal agencies may inspect some underwater structural members at greater than sixty-month intervals, not to exceed seventy-two months, with the FHWA's approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(c) Fracture critical member (FCM) inspections.

(1) Inspect FCMs at intervals not to exceed twenty-four months.

(2) Certain FCMs require inspection at less than twenty-four month intervals. The program manager determines the level and frequency to which these members are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(3) Nondestructive testing or other specialized techniques beyond visual inspection must follow the frequency specified in the FCM inspection plan discussed in § 650.313(f) and may exceed the twenty-four month interval.

(d) Damage, in-depth, and special inspections. The program manager determines the level and frequency of these inspections.

§ 650.313 Inspection procedures.

(a) Inspect each bridge in accordance with the inspection procedures in the AASHTO Manual.

(b) Provide at least one team leader, who meets the minimum qualifications stated in § 650.309, at the bridge at all times during each initial, routine, in-depth, fracture critical, special and underwater inspection.

(c) Rate each highway bridge as to its safe load-carrying capacity in accordance with the AASHTO Manual. Post the bridge in conformity with the AASHTO Manual or in accordance with State law, if the maximum unrestricted legal load or routine permit load under State law exceeds the load allowed under the operating rating or equivalent rating factor.

(d) Prepare bridge files as described in the AASHTO manual. Maintain reports on the results of highway bridge inspections together with notations of any action taken pursuant to the findings of such inspections. Maintain the records in the bridge file for the life of the bridge. Record the findings and results of bridge inspections on standard forms found in the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges.[1]

(e) The program manager must identify and maintain a list of bridges with FCMs, bridges requiring underwater inspection, bridges that are scour critical, and bridges that are vulnerable to seismic damage.

(f) Fracture critical bridges. For each fracture critical bridge, prepare an FCM inspection plan containing the location and description of FCMs, the inspection frequency, and the inspection procedures. Inspect FCMs according to the FCM inspection plan.

(g) Bridges requiring underwater inspections. Develop a plan containing a description of the underwater elements, the inspection frequency and the procedures. Inspect those bridges requiring underwater inspections according to the plan.

(h) Scour critical bridges. For each scour critical bridge, prepare an action plan to monitor and/or correct deficiencies. Scour critical bridges should be inspected after a major flood event.

(i) Bridges vulnerable to seismic damage. Establish a seismic damage vulnerability program to evaluate the adequacy of existing bridges to resist damage from earthquakes and an action plan to correct deficiencies.

(j) Complex bridges. For each complex bridge prepare an inspection plan that includes specialized inspection needs and additional inspector training and/or experience required. Inspect complex bridges according to the plan.

(k) Quality control/quality assurance program. Provide systematic quality control (QC) and quality assurance (QA) to maintain the accuracy and consistency of the inspection program. Include periodic field review of inspection teams, and the review of reports and computations by a person other than the originating individual. Submit documentation of the QC/QA Program to the FHWA for approval.

(l) Follow-up on critical findings. Establish a Statewide or Federal agency-wide procedure to assure that critical findings are addressed in a timely manner. Notify the FHWA of the actions taken to assure public safety.

[1] The "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," December 1995, FHWA Report No. FHWA–PD–96–001, is available at *URL:http://www.fhwa.dot.gov/bridge/mtguide.pdf* and may be inspected and copied as prescribed at 49 CFR part 7.

§ 650.315 Inventory.

(a) Each State and Federal agency must prepare and maintain an inventory of all bridges subject to the NBIS. Certain structure inventory and appraisal (SI&A) data must be collected and retained by the State and Federal agency for collection by the FHWA as requested. A tabulation of this data is contained in the SI&A sheet distributed by the FHWA as part of the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," (December 1995) together with subsequent interim changes or the most recent version. Report the data using FHWA established procedures as outlined in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."

(b) For all types of inspection listed in § 650.313(b), enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the date of inspection.

(c) For existing bridge modifications that alter previously recorded data and for new bridges, enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the completion of the work.

(d) For changes in load restriction or closure status, enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the change in status.

§ 650.317 Reference Manuals.

The documents listed in this section are incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are on file at the Office of the Federal Register in Washington, DC. They are available as noted in paragraph (c)(1) of this section.

(a) Manual for Condition Evaluation of Bridges, 1994 second edition, AASHTO. [*See* § 650.317 (c)(1)].

(b) 2001 Interim Revisions to the Manual for Condition Evaluation of Bridges, AASHTO. [*See* § 650.317 (c)(1)].

(c) Availability of documents incorporated by reference. The documents listed in § 650.317 are incorporated by reference and are on file and available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These documents may also be reviewed at the Department of Transportation Library, 400 Seventh

Street, SW., Washington, DC, in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7. Copies of these documents may be obtained from the following organization:

(1) American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

(2) [Reserved].

[FR Doc. 03–22807 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–02–035]

RIN 1626–AA09

Drawbridge Operation Regulation Change, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to amend the regulations governing the operation of the Burlington Northern Santa Fe Railroad Bridge, mile 0.2, Prescott, Wisconsin; the U.S. 16–61 Bridge, mile 0.3, Prescott, Wisconsin, the Union Pacific Railroad Bridge, mile 17.3, Hudson, Wisconsin across the St. Croix River, and the S36 Highway Bridge at Stillwater, mile 23.4. The revised proposal would modify the dates and hours requiring advanced notice for openings on each of the bridges. This proposed change is intended to reduce the number of hours that a drawtender is required to be on site at each of the bridges while maintaining satisfactory service to vessels navigating the area.

DATES: Comments and related materials must be received by November 10, 2003.

ADDRESSES: Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. Commander (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–02–035), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if it reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation Change, St. Croix River, MN in the **Federal Register** (67 FR 18521). On March 25, 2003, we clarified a statement in the NPRM and reopened the comment period to receive additional comments (68 FR 14364). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In accordance with 33 CFR 117.667, the draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2 at Prescott, Wisconsin, the U.S. 16–61 Bridge, Mile 0.3, at Prescott Wisconsin and the Union Pacific Railroad Bridge, Mile 17.3, at Hudson, Wisconsin, currently open on signal; except that, from December 15 through March 31, the draws open on signal if at least 24-hours notice is given. Currently, the S36 Stillwater Highway Bridge, Mile 23.4, opens on signal at various times throughout the day from May 15 through October 15, and on signal from October 16 through May 14. The NPRM proposed to amend the regulations governing drawbridges across the St. Croix River by adding a notice requirement for bridge openings during the summer season. Specifically, the NPRM proposed requiring that advance notice be given prior to 11 p.m. for openings between midnight and 7 a.m. from April 1 to October 15 for three of the four bridges.

The Burlington Northern Santa Fe Railroad, Mile 0.2 at Prescott initially requested a change to the regulation for the Burlington Northern Santa Fe Railroad, to open on signal from 7 a.m. to midnight and to open between midnight and 7 a.m., if the bridge was notified prior to 11 p.m during the summer tourism months. Although the request was submitted by only one bridge owner, the approval would also impact the U.S. 16–61 Bridge and the Union Pacific Railroad Bridge. Therefore, the proposal was expanded to include these two bridges. The S36 Bridge at Stillwater is more remotely located than the other three bridges, and we have proposed a separate opening requirement for the S36 Bridge rather than including it with the other three bridges.

Discussion of Comments and Changes

The rule proposed by the NPRM included two separate changes to the existing regulation that affect the Burlington Northern Santa Fe Bridge, the U.S. 16–61 bridge, and the Union Pacific railroad bridge. The first change would restrict drawbridge openings between midnight and 7 a.m. by requiring that advance notice be made by 11 p.m. the night before. The second change would move up the date when the drawbridges require 24-hour notification for an opening from December 15 to October 16 each year. The Coast Guard received six letters commenting on one or both of the proposed changes.

One letter opposed the proposed requirement allowing the drawbridges to remain in the closed to navigation position between midnight and 7 a.m. except when a request for an opening was received prior to 11 p.m. The letter cited impacts on weekend boaters who may want late night openings, additional openings required by increases in the river level, and the difficulty in amending the bridge operating regulations once they have become effective. A review of the bridge opening data for the period of April 1 to December 14 for the years 1998—

2002 revealed that bridge openings between midnight and 7 a.m. decreased by 87% during that time period. For 2001, there were two openings in this time period, and in 2002 there was one opening. Due to the drastic reduction in requests for openings during the midnight to 7 a.m. time period, including weekends and high river stages, the Coast Guard has determined that impact on vessel traffic in the affected area will be minimal and may be avoided by making a request for an opening prior to 11 p.m. Accordingly, the requirement to give advanced notice for openings between midnight and 7 a.m. will remain in the proposed rule. With regard to the burden of modifying or removing a regulation once in effect, nothing in this proposed rule would create an unusual burden to future amendment in accordance with Administrative Procedures Act.

Three letters proposed changing the time period that requires an advance notice from midnight to 7 a.m. to midnight to 8 a.m. This would allow the drawbridge owners to provide two standard eight-hour work shifts instead of one eight-hour shift and one nine-hour shift during 8 a.m. to midnight time period when the bridges would be required to open on signal. A review of the historical bridge opening data for the affected bridges revealed that the bridges opened on average less than two times per month between the hours of 7 a.m. and 8 a.m. for the period April 1 through October 31. The Coast Guard agrees that changing the end of the time period from 7 a.m. to 8 a.m. would have minimal impact on vessel traffic and facilitate more manageable work shifts for the bridge owner. Additionally, vessels that might be impacted by the change can avoid delays by requesting a bridge opening prior to 11 p.m. the day before. Therefore, we have amended the proposed rule to reflect the time change.

Two letters opposed moving the start of the winter 24-hour notification time period from December 15 to October 16. One of the letters cited that the boating season on the St. Croix River does not traditionally end until late October. The other letter cited a deterrent effect on vacationers wanting to view the fall colors on the river. After reviewing the bridge opening data for October 16 through November 1, the Coast Guard has determined that the amount of vessel traffic on the St. Croix River is sufficient to amend the beginning date for the 24-hour notification period from October 16 to November 1.

In summary, this SNPRM proposes modifying the rule as it was originally proposed in the NPRM by extending the time period requiring advanced notification before 11 p.m. during the summer tourism season by one hour from midnight to 8 a.m. instead of midnight to 7 a.m. This SNPRM also proposes moving the ending date of the summer operating hours from October 15, as it was originally proposed in the NPRM, to October 31.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Implementing the proposed regulation would allow the owners of drawbridges to reduce the number of hours drawtenders are required to be on site due a reduction in requests to open the drawbridges between midnight and 8 a.m. from 1 April to 31 October. Previously, these advanced notification requirements were temporarily instated to facilitate maintenance on the bridges. During these maintenance periods, the bridge owners received no complaints from commercial or recreational vessel operators. Additionally, this has become the widely accepted method of voluntarily requesting bridge openings from local vessel operators during non-maintenance periods without complaint.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard identified local marinas as small entities that might be affected by this rule due to restricted access to the marinas during periods when drawtenders are not on site. These entities were consulted prior to initiating this rulemaking process to minimize the economic impact that might result from this proposed rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this proposed rule may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Promulgation of changes to drawbridge regulations have been found to not have significant effect on the human environment. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.667, paragraph (a) and paragraph (b), introductory text, are revised and a new paragraph (b)(3) is added to read as follows:

§ 117.667 St. Croix River

(a) The draws of the Burlington Northern Railroad Drawbridge, mile 0.2, Prescott Highway Drawbridge, mile 0.3, and the Hudson Railroad Drawbridge, mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the Stillwater Highway Bridge, mile 23.4, shall open on signal as follows:

* * * * *

(3) From October 16 through May 14, if at least 24 hours notice is given.

* * * * *

Dated: August 25, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 03–22793 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7555–3]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Notice of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: Due to a request from a commenter, EPA is holding a public hearing on a notice of proposed rulemaking that was published in the **Federal Register** on July 3, 2003 (68 FR 39888) related to the mobile source provisions in 40 CFR 51.309 of EPA's regional haze rule. The EPA published both a direct final rule and a concurrent notice of proposed rulemaking to amend and revise certain provisions of the regional haze rule in order to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

DATES: The public hearing will be held from 9 a.m. to 12 p.m. (MST) on Wednesday, October 8, 2003, at the U.S. EPA–Region 8, 999 18th Street, 2nd Floor Conference Center–Columbine Room, Denver, CO 80202.

ADDRESSES: *Docket.* Materials relevant to this rulemaking are contained in Public Docket Number OAR–2002–0076 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1744, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view

public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the docket identification number, OAR–2002–0076.

FOR FURTHER INFORMATION CONTACT: If you would like further information about today's action, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov*.

SUPPLEMENTARY INFORMATION: We have received a request for public hearing on this rulemaking from one commenter, the Center for Energy and Economic Development (CEED). The CEED commented that EPA should not advance either the proposed or direct final rules, and that further opportunity for public comment is needed.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: August 29, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22932 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–2000–8013]

Standard Time Zone Boundary in the State of North Dakota: Denial of Petition to Change Time Zone Boundary

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: The Chairman of the Board of County Commissioners for Mercer County, North Dakota; petitioned the U.S. Department of Transportation to move Mercer County from the mountain to the central standard time zone. DOT held a hearing in the area and received extensive written public comments. Based on the information in the docket and the strong objections to a change voiced by the vast preponderance of commenters, we are denying the petition.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4702.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

In a petition dated August 16, 2000, the Chairman of the Mercer County Board of County Commissioners asked the Department to move the county from the mountain time zone to the central time zone. The Commissioners submitted a memorandum outlining why the change would suit "the convenience of commerce." The petition noted that the issue had been placed on the June 13, 2000, primary election ballot. The results of that election indicated that 1,180 voters favored the change while 1,038 voters opposed the change.

Because of the strong local interest in the proposal, DOT convened a public hearing very early in the process. The hearing took place on September 28, 2000, at the Civic Center in Beulah, ND, and was attended by approximately 100 people. Based on a show of hands conducted several times throughout the evening, approximately one-third of those in attendance supported the change and two-thirds opposed the change. The DOT representative also urged individuals, businesses, and organizations to send written comments to the Department's docket so that all the relevant facts could be collected and considered systematically.

The rulemaking has been extremely controversial in the community. Over 500 written comments were filed in the docket. Some of these comments were petitions signed by hundreds of people. Some people filed more than one comment and signed more than one petition. Even without doing a crosscheck of names, it is clear that the vast majority of people commenting on the issue in this proceeding opposed the proposed change.

Under the Uniform Time Act, as amended, the Secretary of Transportation can only change a time zone boundary if it would suit "the convenience of commerce." Traditionally, we give great deference to community views on the assumption that the people who would be most affected by a proposed change are in the best position to advise us on the impact.

The proponents of central time made many strong arguments, which generally echoed the points made in the petition. Almost all noted the reliance on goods and services coming from the Bismarck-Mandan area, which is on central time. The closest airport is in Bismarck, most television and newspapers come from Bismarck, and many residents go to the central time zone for work, medical services, and recreation. The coal and energy industry, which is a major employer in the area, is closely tied to central time.

Those favoring the current time observance also made many strong arguments. One of the central themes was that observance of mountain time provides important advantages that make life more convenient, productive, and pleasant.

Many opponents of the change argued that the current time observance affirmatively helps business and is more conducive for farmers. Farmers opposed to the change were concerned about getting replacement parts later in the day and that grain elevators would close an hour earlier. Others anticipated a disruption in the farming day by having to attend to errands or engagements in town that would occur an hour earlier under central time. A number of commenters were concerned that a change would put small, local shops out of business, and negatively impact the overall economic growth of the area. Others noted, and appreciated the fact, that the current observance allows mail delivery one hour earlier.

Some commenters noted that they rely on the local radio station and the two weekly newspapers, rather than on media outlets originating in the central time zone. Others liked the time zone difference because they enjoyed viewing network television broadcasts an hour earlier than they would if the change were made.

Many of the strongest comments argued that the current observance benefits children, education, and family life. Many were concerned about children waiting for buses in the dark on icy, rural roads. Others believed that the current observance was more conducive to learning, after-school

supervision of children, and participation in school and community activities.

Many of the proponents of the status quo argued that the current system works well and causes little confusion. Similarly, most appear to believe that a change would inconvenience them personally and make their lives difficult in some way.

Under the law, we are required to balance all the information in the record. Based on the information presented and the overwhelming community sentiment voiced in the record that a change would not "suit the convenience of commerce," I am hereby denying the petition. The Commission is welcome to file another petition if circumstances change in the future.

Issued in Washington, DC on August 29, 2003.

Rosalind Knapp,

Deputy General Counsel.

[FR Doc. 03–22921 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI45

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), determine that the action of listing the mountain plover (*Charadrius montanus*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act), is not warranted, and we consequently withdraw our proposed rule and our proposed special rule. We make this determination because threats to the species as identified in the proposed rule are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

ADDRESSES: The supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Field Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946, telephone; 970–243–2778, facsimile 970–245–6933, or e-mail *al_pfister@fws.gov*. Pertinent information also is available at the Web site *http://www.r6.fws.gov/mtnplover/*.

FOR FURTHER INFORMATION CONTACT: Allan Pfister, Assistant Field Supervisor, Grand Junction, Colorado (see **ADDRESSES**), telephone 970–243–2778; facsimile 970–245–6933.

SUPPLEMENTARY INFORMATION:

Background

The mountain plover (*Charadrius montanus*) is a small bird averaging 21 centimeters (8 inches) in body length and is similar in size and appearance to a killdeer (*Charadrius vociferus*). It is light brown above with a lighter colored breast, but lacks the contrasting dark breastbelt common to most other plovers, including the killdeer. Mountain plovers are insectivores; beetles, grasshoppers, crickets, and ants are its principal food items (Stoner 1941, Baldwin 1971, Rosenberg *et al.* 1991, Knopf 1998).

The mountain plover is associated with shortgrass and shrub-steppe landscapes throughout its breeding and wintering range. Historically, on the breeding range, the plover occurred on nearly denuded prairie dog colonies (Knowles *et al.* 1982, Olson-Edge and Edge 1987) and in areas of major bison concentrations where vegetation was clipped short (Knopf 1997). Currently, the mountain plover also is found on human-made landscapes (*e.g.*, sod farms and cultivated fields) that may mimic their natural habitat associations, and on other sites with little vegetative cover (*e.g.*, alkali flats). As mountain plovers are usually associated with sites that are modified by grazing and digging mammals (kangaroo rat (*Dipodomys* sp.) precincts and California ground squirrel (*Spermophilus beecheyi*) colonies on wintering grounds in California, as well as prairie dog colonies on the breeding grounds), Knopf and Miller (1994) suggested classifying the mountain plover as a species more closely associated with disturbed prairie sites, rather than pristine prairie landscapes.

Mountain plovers nest in the Rocky Mountain and Great Plains States from Montana south to Nuevo Leon, Mexico. Most mountain plovers breed in Montana, Wyoming, and Colorado, with substantially fewer breeding birds occurring in Arizona, Kansas, Nebraska, New Mexico, Oklahoma, Texas, and Utah. Breeding was confirmed in 1999 in Mexico on a Mexican prairie dog (*Cynomys mexicanus*) colony in the State of Nuevo Leon (Desmond and Ramirez 2002). Nesting habitat in Canada is restricted to southeastern Alberta and southwestern Saskatchewan. Nesting has not been documented in Canada since 1990.

Breeding adults, nests, and chicks have been observed on cultivated lands in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming (Shackford and Leslie 1995; Shackford *et al.* 1999; V. Dreitz, Colorado Natural Heritage Program, in litt. 2003; Young and Good 2000). The majority of mountain plovers winter in California, where they are found mostly on cultivated fields. However, they also can be found on grasslands or landscapes resembling grasslands (Edson and Hunting 1999, Knopf and Rupert 1995, Wunder and Knopf 2003). Wintering mountain plovers also are reported in Arizona, Texas, and Mexico, but fewer have been documented at these locations than in California.

Historically, the mountain plover has been found in a variety of habitats during winter, including grasslands and agricultural fields in California (Belding 1879 in Grinnell *et al.* 1918; Tyler 1916; Grinnell *et al.* 1918; Preston 1981 in Moore *et al.* 1990; Werschkull *et al.* 1984 in Moore *et al.* 1990). Irrigated farmlands—burned Bermuda grass fields and grazed alfalfa fields—in the Imperial Valley of California, where desert scrub has been converted to agriculture within the past 100 years, have become the predominant winter habitat for mountain plovers (Wunder and Knopf 2003, AMEC Earth and Environmental 2003). There, plovers move onto fields for short periods following harvest, especially where the fields are turned over, burned, or grazed by sheep. Insect availability, furrow depth, size of dirt clods, and the vegetation of contiguous land parcels are believed to influence the suitability of individual cultivated fields (E. Marquis-Brong, in litt. 1999). Therefore, while cultivated lands are abundant throughout the Central and Imperial Valleys, not all of them are suitable wintering habitat. Because annual climatic changes in the Central Valley can greatly influence vegetative structure within a given year, mountain plover observations at traditionally occupied sites decline in years when abundant rainfall causes vegetation to become too tall (E. Marquis-Brong, Bureau of Land Management (BLM), in litt. 1999).

Historically, breeding mountain plovers were reported as locally rare to abundant, and widely distributed in the Great Plains region from Canada south

to Texas (Coues 1878, Knight 1902, McCafferty 1930, Bailey and Neidrach 1965). Knopf (1996b) estimated the North American mountain plover population to be between 8,000 to 10,000 birds. His estimate is based on a 1994 count of mountain plovers on their winter habitat in California. Applying the same assumptions using the more recent 1998–2002 winter counts ranging from 1,372 to 4,037 individuals would yield an estimate ranging from 5,000 to 11,000 (Hunting *et al.*, 2001; Shuford *et al.* 2000; Wunder and Knopf 2003, S. Myers, pers. comm. 2002). The search efforts among years are not comparable, but represent the best available information. We believe the estimates provided are a reasonable approximation of mountain plover total abundance, given recent survey efforts directed at mountain plovers on their winter habitat, the dedicated efforts to locate them in California's Central and Imperial valleys, and their winter flocking behavior that enhances detection.

As discussed by Knopf (1996b), the continental breeding range of the mountain plover has been reduced from its historical extent, especially in the eastern portion of the range. The mountain plover was formerly common in western and central Kansas (Goss 1891), and reported as numerous between Fort Supply, Oklahoma, and Dodge City, Kansas (McCauley 1877). The species was historically numerous in Colorado (Bailey and Niedrach 1965) and Wyoming (Knight 1902). Lower numbers of mountain plovers formerly occupied western South Dakota (South Dakota Ornithologist's Union 1991) and Nebraska (Knopf 1996b), and there is one known breeding reference from North Dakota (Roosevelt 1885). There was a single report of breeding mountain plovers in northern Mexico in 1901 (Sanford *et al.* 1924), and breeding was confirmed in the State of Nuevo Leon in 1999 (Desmond and Ramirez 2002).

Colorado—The Colorado Bird Atlas Partnership estimated a population of 7,200 (range from 3,652 to 12,168) mountain plovers in Colorado, with perhaps 22 percent of these in Weld County (H. Kingery, in litt. 1997; Kingery 1998). However, this population estimate should be considered a "first approximation" and used with caution (Kingery 1998). A more recent effort to estimate mountain plover abundance is the Rocky Mountain Bird Observatory's estimate of 4,850 individual mountain plovers in eastern Colorado (S. Gillihan, in litt. 2003).

Mountain plovers have been studied intensively in Weld County, Colorado, from the late 1960s to the present. Graul and Webster (1976) considered Weld County in northeastern Colorado the breeding stronghold for the mountain plover, a conclusion widely referenced by subsequent authors (*e.g.*, Knopf and Rupert 1996). However, inventories completed by the Colorado Bird Atlas Partnership from 1987 through 1995 found mountain plovers more widely distributed than previously known in many other eastern Colorado counties (Kingery 1998). Based on their inventories, the Bird Atlas Partnership concluded that 75 percent of Colorado's mountain plovers occurred south of Weld County (H. Kingery, Colorado Bird Atlas Partnership, pers. comm. 1994, in litt. 1998).

Breeding mountain plovers also have been reported from southeastern Colorado by others (Chase and Loeffler 1978; Nelson 1993; R. Estelle, Colorado Bird Observatory, in litt. 1994; M. Scott, BLM, in litt. 2000; K. Giesen, Colorado Division of Wildlife (CDOW), in litt. 2001). During a 1996 inventory, Carter *et al.* (1996) concluded that mountain plovers occur at very low densities in 10 eastern Colorado counties, and are most numerous in Kiowa and Park Counties. Mountain plovers also have been seen in Moffat County in northwestern Colorado (Behrends and Atkinson 2000). The Colorado Natural Heritage Program conducted mountain plover surveys in Park County in central Colorado from 1994 through 2002, and currently estimate 2,300 mountain plovers at this location (Pague and Pague 1994, Sherman *et al.* 1996, Hanson 1997, Granau and Wunder 2001, Wunder *et al.* in prep.). South Park appears to currently be the most productive breeding location in Colorado, and probably throughout the entire breeding range. This is clearly the largest breeding population of mountain plovers in Colorado, and perhaps throughout the breeding range.

In Weld County, 60 to 70 percent of the mountain plover habitat occurs on the Pawnee National Grassland, a historically recognized breeding stronghold (F. Knopf, in litt. 1991). Today, nearly all mountain plovers have abandoned the Pawnee National Grassland. During the late 1960s, Graul and Webster (1976) estimated about 69,000 hectares (171,000 acres) of good habitat on the Pawnee National Grassland, with mountain plover densities of at least 10/kilometer^2 (26/mile^2). Based on these estimates, we calculate that at least 7,000 mountain plovers likely occupied the Pawnee in the early 1970s. Knopf (in litt. 1991) estimated about 1,280 individuals in 1991, while presently the Grassland population is about 78 individuals (F. Knopf, pers. comm. 2002).

Graul (1973) hypothesized that mountain plover productivity on the Pawnee is influenced by drought and its corresponding effects on food supply. In 1995, the Pawnee received above-average spring rainfall resulting in lush vegetation growth not suitable as mountain plover nesting habitat. As a result, few birds were found there during the breeding season; conditions continued through 1996 and 1997, with few adult birds and very little reproduction observed through 2002 (Knopf 1996; F. Knopf, in litt. 2003).

Although mountain plovers nest on cultivated fields in southeast Colorado and adjacent States, 1 study (Shackford *et al.*1999) found that of 46 nests monitored on cultivated fields, 31 nests failed and the fate of the remaining 15 nests was unknown. Of the 31 failed nests, 22 nests (48 percent of total nests) were destroyed by farm machinery. Giesen (in litt. 2000) reported a higher nest success on agricultural fields than on native rangeland. As a result of these conflicting findings, research was initiated in five eastern Colorado counties to better describe nest success and productivity, and the implications of cultivated field nesting to mountain plover population recruitment (T. McCoy, Colorado Natural Heritage Program, in litt. 2001). In 2001 and 2002 within the study area, nests on croplands numbered 45 and 85, respectively, with the increase due to a 40 percent increase in area surveyed (V. Dreitz, in litt. 2002). Nest success on cropland and rangeland was equal in 2001, but was about 10 percent higher on range in 2002 (V. Dreitz, in litt. 2002). Predation was the major cause of nest failure on rangelands in 2001 and 2002. Predation and tillage losses were the cause of nest failure on cropland, but the combined losses on cropland were fewer than predation losses on rangeland in either year.

Based on the data presented above, we estimate over 7,000 breeding mountain plovers in Colorado.

Montana—The largest known number of breeding mountain plovers in Montana is found on a large complex of black-tailed prairie dog colonies in the contiguous Phillips and Blaine Counties (Knowles and Knowles 2001, Dinsmore 2001). In Phillips County, nearly all mountain plovers are found on active prairie dog colonies that also are grazed by cattle (Dinsmore 2001).

Although Phillips and Blaine Counties contain a major breeding concentration for the species (Knopf and

Miller 1994, Knowles and Knowles 2001, Dinsmore 2001), small numbers of mountain plovers also breed on BLM lands in Valley County (Little Beaver Creek), and on private land in Wheatland and Golden Valley Counties near the Little Belt and Big Snowy Mountains (Knowles and Knowles 1998). Surveys through 2003 also report mountain plovers in Big Horn, Broadwater, Carbon, Fergus, Jefferson, Hill, Madison, Musselshell, Petroleum, Rosebud, and Treasure Counties (L. Hanebury, Service, pers. comm. 2003; Knowles and Knowles 1996, 1998; J. Grensten, BLM, pers. comm. 1998).

The most recent information documents that the mountain plover population in southern Phillips County increased from about 100 individuals in 1995, to 175 individuals in 2001 (Dinsmore 2001). In 2003, over 150 nests were found on the study site (Dinsmore, pers. comm. 2003). This increase is likely due to the recovery of black-tailed prairie dogs from a recent sylvatic plague epizootic. Mountain plovers at the Fort Belknap Indian Reservation increased from 0 to 20 from 1993 to 1998 following an increase in black-tailed prairie dogs and the introduction of bison grazing, and there may presently be as many as 100 individuals, although the change may be due to more rigorous inventory (Knowles and Knowles 2001; S. Dinsmore, pers. comm. 2003). Mountain plover densities on black-tailed prairie dog colonies at the Charles M. Russell National Wildlife Refuge declined by more than half from 1980 to 1996. Prairie dog numbers at Charles M. Russell National Wildlife Refuge have increased since 1996, and plover numbers have gone up slightly. Knowles and Knowles (2001) report that between 1992 and 2000 mountain plovers declined at their Central and Southwestern study areas, but increased slightly at their Northeastern study area.

Dinsmore (2001) concluded that mountain plovers in southern Phillips County are entirely dependent on an active black-tailed prairie dog population, and that the mountain plover abundance at his study site will likely parallel the population trends of black-tailed prairie dogs.

Knowles and Knowles (1996) estimated less than 2,000 mountain plovers in Phillips and Blaine Counties, and less than 800 additional individuals at the other occupied locations in the State. Based on his 6 years of research, Dinsmore (pers. comm. 2002) provided a rough estimate of 700 mountain plovers throughout all of Phillips and Blaine Counties, and noted that Knowles and Knowles (1996) estimate of 800 mountain plovers at other areas is reasonable. Therefore, we believe the best information currently available indicates the total population in Montana is approximately 1,500 mountain plovers (Knowles and Knowles 1996, Knowles and Knowles 1998, Dinsmore 2001, Dinsmore, pers. comm. 2002).

Wyoming—The mountain plover is classified as common in Wyoming, with breeding known or suspected in 20 of 28 latitude/longitude blocks (latilong blocks) occurring across the entire State (Wyoming Game and Fish Department 1997). The latilong records reviewed included sightings from 1969 to 1996, with the highest number of individual records occurring in the Saratoga, Wapiti, Powell, Casper, Bill, and Laramie blocks. Because the search effort among the blocks is not equal, the number of records reported for each block is not a good indicator of mountain plover abundance within each block. Further, while latilong records may note evidence of breeding, they do not provide information regarding nesting success. Based on these latilong records, the Wyoming Game and Fish Department reports the mountain plover as common in the State, but acknowledges that information is lacking to make any estimate of total population or determine whether it is increasing, stable, or declining (Oakleaf *et al.* 1996).

Additional inventories have been conducted in Wyoming that confirm the presence of mountain plovers at many of the previously reported locations. For example, surveys conducted in the Powder River Basin (Campbell, Converse, Sheridan, Crook, and Weston Counties) in 2001, in preparation for the Powder River Basin Oil and Gas Project, found 15 mountain plovers (Good *et al.* 2002, Keinath and Ehle 2002). Most of the Powder River Basin is private land, and the surveys were conducted from public roads only. Consequently, these surveys may not be a good representation of mountain plover abundance in the Powder River Basin. From 1992 to 2002, nesting was confirmed on the Thunder Basin National Grassland (Thunder Basin) (within the Powder River Basin) in northeast Wyoming in most years (Bartosiak 1992; M. Edwards, Forest Service, in litt. 1994; T. Byer, in litt. 1997; T. Thompson, Forest Service, in litt. 2003).

Knopf (in litt. 2001b) reported that mountain plovers may be more common in Wyoming than previously believed, particularly in Carbon County. In 1999 and 2000, a total of 159 and 105 mountain plover adults were reported from Sweetwater and Carbon Counties, respectively, with many fewer individuals reported from Albany, Bighorn, Fremont, Lincoln, Natrona, Park, Sublette, and Washakie Counties (P. Deibert, in litt. 2002). Surveys near Lysite in Fremont County found 39 mountain plovers on about 530 ha (1,300 ac) of suitable habitat (L. Hayden-Wing, Hayden-Wing Associates, in litt. 2003). Surveys for mountain plovers in south-central Wyoming in 2002 found a total of 50 adults and 11 nests (Hayden-Wing Consultants 2002). As many as 51 mountain plovers likely occurred on Foote Creek Rim in Carbon County in 1994, but the number declined to 26 in 2002 (Young and Erickson 2003). Most plovers have vacated habitat near the wind turbines and congregated on a prairie dog colony on the northern end of the Rim (Young and Erickson 2003). Nine nests were located on Foote Creek Rim in 2000 (Young and Good 2000).

The total number of mountain plovers observed on Thunder Basin National Grasslands declined from 53 to 37 from 1993 to 2002, while the area surveyed during this time quadrupled (T. Thompson, in litt 2003). Black-tailed prairie dog colonies in the area were affected by a significant plague event in 2001 and 2002. Mountain plovers on Thunder Basin nest almost entirely on black-tailed prairie dog colonies (Keinath and Ehlen 2002).

From 1979 to 2002, nesting was confirmed on and near the Antelope Coal Mine in the southern Powder River Basin, and breeding densities were reported to range from 0.9 to 2.4 birds/km^2 (2.3 to 6.2/mi^2) (Oelklaus 1989, Thunderbird Wildlife Consulting, Inc. 2003). From 1982 to 1991, a total of 26 broods were reported on mine permit areas, while only 6 broods have been reported on the same permit areas from 1992 to 2002 (Thunderbird Wildlife Consulting, Inc. 2003). Parrish (1988) inventoried mountain plovers over an extensive area of the southern Powder River Basin, and reported an overall density of about 0.1 mountain plover/km^2 (0.3/mi^2). Mountain plovers throughout the southern Powder River Basin are generally thought to be widely scattered at low densities, with a few areas of local concentrations (Oelklaus 1989). Inventories from the Laramie Plains and Cheyenne Plains in the late 1950s report densities ranging from 0.3 to 23.8 mountain plovers/km^2 (0.9 to 61.9/mi^2) (Laun 1957, Finzel 1964). Therefore, densities reported from the southern Powder River Basin in the 1980s are less than those reported from the Laramie and Cheyenne Plains in the 1950s, but it is unknown whether the difference is due to a decline in

mountain plover abundance, inherent differences in habitat quality, or both.

Knopf (in litt. 1991, 2001b) found mountain plovers on the Laramie Plains, in the vicinity of Shirley Basin, on the Chapman Bench (Park County) north of Cody, and on Mexican Flats (Carbon County) northwest of Baggs. Specific surveys of Chapman Bench between 1988 and 1999 found between 7 to 14 adult mountain plovers and some juveniles (P. Deibert, pers. comm. 1999a).

Mountain plovers also breed in shrub-steppe habitat in southwest Wyoming (Oakleaf *et al.* 1982). The BLM estimates 10 to 15 breeding pairs in the Jack Morrow Hills north of Rock Springs in Sweetwater County (L. Keith, BLM, pers. comm. 1999). Mountain plovers reported from Morton Pass in Albany County have declined from about 30 in 1997 to about 5 in 2000 (Young and Erickson 2003).

Based on the best information available from Wyoming, mountain plovers may number from 2,000 to 5,000 individuals (P. Deibert, pers. comm. 2003; F. Knopf, in litt. 2003).

Nebraska—A nesting mountain plover was found in Kimball County in western Nebraska in 1990 (F. Knopf, in litt. 1990), and two mountain plover nests were found in a fallow field in the same vicinity in 1997 (W. Jobman, Service, in litt. 1997). Seventeen mountain plovers were counted on 10 cultivated fields in western Nebraska in 1992 and 1995 (Shackford and Leslie 1995), and 1 nest was found in summer fallow in Kimball County in 1999 (W. Jobman, in litt. 1999).

No mountain plovers were found in 2001, following inventories of 92 sites, including black-tailed prairie dogs colonies, in 8 western Nebraska counties (K. Nelson, Nebraska Game and Parks Commission, in litt. 2003). The lack of mountain plovers may have been due to the survey occurring late in the breeding season. In 2002, a survey occurred in Kimball County exclusively, which is dominated by dry land wheat farming with very little shortgrass prairie. A total of 118 mountain plovers were found at the 66 locations surveyed, and all but 1 individual were in wheat fields. A total of 27 juvenile mountain plovers also were seen, with most of these in tilled, fallow ground. We have no information to assess trends in Nebraska, but the Nebraska Game and Parks Commission is concerned about the bird's viability in the State (K. Nelson, in litt. 2003).

New Mexico—Sager (1996) noted that the mountain plover was reported as "fairly common" in New Mexico in 1928, and recognized that the 152 mountain plovers he surveyed in 1995 would not likely be construed as "fairly common" today. However, he cautioned that mountain plovers may be more numerous than he reports because of their difficulty in detection and clumped distribution. Sager (1996) also reported that New Mexico is likely on the fringe of acceptable mountain plover habitat. We are not aware of a total population estimate or population trend for New Mexico.

Oklahoma—Historic records of mountain plovers east of Cimarron County do not mention breeding behavior, so it is unclear whether the mountain plovers reported were nesting or migrating to other locations. Hence, both the historic and current distribution may be confined to Cimarron County in the panhandle of Oklahoma. In Cimarron County during the nesting seasons of 1986–1990, Shackford (1991) observed 15 mountain plovers in native grassland and 10 in cultivated fields. Ten of the 15 birds observed in native grassland were on prairie dog colonies. The few plovers found, combined with the discovery of one mountain plover nest on a maize field, stimulated searches of cultivated fields in Oklahoma in 1992, 1993, and 1994. Using approximately the same search method and effort each year, 408, 428, and 108 individual mountain plovers were found on cultivated fields in each of these years, respectively, and up to 13 nests were found on the cultivated fields from 1986 through 1995 (Shackford *et al.* 1999, Shackford and Leslie 1995). The plovers reported include both plovers seen during the breeding season as well as mountain plovers in premigratory flocks. The decline in 1994 is attributed to a decline in mountain plovers seen during the nonbreeding season, not necessarily a decline in breeding birds. No other surveys have been completed in Oklahoma, and estimates of the total Statewide population have not been made (S. Harmon, Service, pers. comm. 2002).

Kansas—Counts of breeding mountain plovers on cultivated lands in western Kansas from 1992 through 1995 ranged from 52 (6 counties searched) to 114 (4 counties searched) (Shackford and Leslie 1995). Surveys of cultivated fields and rangelands within the boundary of the Cimarron National Grassland (Cimarron) in Kansas also have been conducted. Counts on the Cimarron in 1994, 1996, and 1997 ranged from 1 to 13, with most of the sightings on plowed fields (J. Chynoweth, Forest Service, in litt. 1997).

Other Breeding Areas—In Utah, the only site known to have breeding mountain plovers is in Duchesne County, south of Myton, in the Uinta Basin. Counts of breeding mountain plovers in this area from 1992 through 2001 ranged from 6 to 29. From 1992 to 2001, broods were found in all years except 1992, 1999, and 2001; six adults and no broods were found in 2001; and no mountain plovers were seen in 2002 (T. Dabbs, BLM, in litt. 1997; F. Knopf, in litt. 1999; B. Stroh, Forest Service, pers. comm. 2002).

Three pairs of nesting mountain plovers were reported near Fort Davis, Texas, in 1992 (K. Brian, Davis Mountain State Park, pers. comm. 1992). More recent breeding in Texas has not been reported due to lack of access to private land (P. Horner, Texas Parks and Wildlife Department, in litt. 1997).

From 1914 to the present, mountain plovers in Arizona have been reported during the breeding season from Apache, LaPaz, Maricopa, and Navajo Counties. A pair was found on Navajo Nation land near Winslow in June 1995, and an adult incubating three eggs was found near Springerville, Apache County, Arizona, in May 1996 (T. Cordery, Service, pers. comm. 1998; D. Shroufe, Arizona Game and Fish Department, in litt. 1999). In May 2002 breeding behavior was observed in three birds west of Springerville, in Apache County (Ted Cordery, BLM, pers. comm. 2003).

The most recent nesting record in Canada was one nest in southeastern Alberta in 1989 (S. Jewell, Service, in litt. 2000). No mountain plovers were found during searches conducted in Alberta and Saskatchewan in 2001 (C. Wershler, Sweetgrass Consultants, pers. comm. 2002).

Mountain plover breeding behavior was observed in 1998 in Nuevo Leon, Mexico, and one nest was found on a Mexican prairie dog colony in 1999 (Knopf and Rupert 1999a, Desmond and Ramirez 2002).

We believe that Montana, Wyoming, and Colorado represent the historic and current core mountain plover breeding range, although additional peripheral locations in Oklahoma and New Mexico may play an important role in the species' conservation.

Historically, mountain plovers have been observed during the winter in California, Arizona, Texas, Nevada, and on the California coastal islands of San Clemente Island, Santa Rosa Island, and the Farallon Islands (Strecker 1912; Swarth 1914; Alcorn 1946; Jurek 1973; Garrett and Dunn 1981; Jorgensen and Ferguson 1984; B. Deuel, American Birds Editor, in litt. 1992; D. Shroufe, in litt. 1999). In Mexico, wintering mountain plovers have been sighted in

Baja California, as well as north-central and north-eastern Mexico, in Sonora, Chihuahua, Coahuila, Durango, Nuevo Leon, and San Luis Potosi (Russell and Lamm 1978; A. Garza de Leon, The Bird Galley, in litt. 1990; L. Stenzel, Point Reyes Bird Observatory, in litt. 1992; Gomez de Silva *et al.*1996; Knopf and Rupert 1999a; Dieni *et al.* 2003, J. Taylor, pers. comm. 2003).

All information we have reviewed indicates that California is the primary wintering ground for mountain plovers, supporting up to 95 percent of the United States' population of mountain plovers (Morey, in litt. 2003). However, recent isotope studies indicate that there may be a disproportionate number of males in the wintering flocks. Seventy-five percent of the feathers sampled from the Imperial Valley in the winter of 2002 were from males, and sixty-two percent were from males in the winter of 2003. This could indicate a slightly higher female mortality, or perhaps differential migration patterns between male and female plovers (*e.g.* females wintering farther south into Mexico). More stable isotope work in the next two years may help answer this question (Knopf, pers. comm. 2003).

Mountain plovers are most frequently reported and found in the greatest numbers in two general locations in California—(1) The western Central Valley from Solano and Yolo Counties to Kern County (primarily the western San Joaquin Valley), and (2) the Imperial Valley in Imperial County. Throughout these areas, sightings occur on agricultural fields and noncultivated sites. Research conducted in the San Joaquin Valley concluded that the noncultivated sites are the preferred habitat there, while cultivated sites are the exclusive habitat in the Imperial Valley (Knopf and Rupert 1995, Wunder and Knopf 2003).

From 1961 to 1968 anywhere from 25 to 10,000 mountain plovers were counted in winter on Kern National Wildlife Refuge in the San Joaquin Valley (J. Engler, Service, in litt. 1992). In January 1994, researchers counted 3,346 mountain plovers during a simultaneous 1-day survey of 25 sites throughout California (B. Barnes, National Audubon Society, in litt. 1994). A similar coordinated survey at 31 sites in the Central and Imperial valleys in January 1998 estimated 2,663 mountain plovers (Hunting *et al.* 2001). In December 1999, two skilled observers were unable to find any mountain plovers in the entire San Joaquin Valley after 2 days searching traditionally occupied sites (Dinsmore, in litt. 2000b), which may have been due to degraded habitat conditions following heavy rains (F. Knopf, pers. comm. 2000). On February 2, 2002, 536 mountain plovers were counted in the entire San Joaquin Valley, which may indicate some recovery of habitat conditions since 1999 (S. Fitton, in litt. 2002). Within the San Joaquin Valley, premigratory flocks of up to 1,100 birds have been seen in Tulare County (Knopf and Rupert 1995). The Carrizo Plain (separated from the San Joaquin Valley by the Tremblor Range) also is recognized as a predictable wintering site, with wintering birds reliably reported from the west side from 1971 to 1998 (S. Fitton, in litt. 1992, *www.birdsource.org* 2000). Solano and Yolo Counties in the Central Valley near Sacramento also provide wintering habitat for mountain plovers, with about 200 being seen in these counties in recent years (K. Hunting, California Department of Fish and Game, in litt. 1998; C. Conard, Sacramento Audubon, in litt. 2003).

Wunder and Knopf (2003) suggested that many mountain plovers have apparently shifted from the Central Valley as a result of habitat loss to southern California and the Imperial Valley. Recent search efforts and records for the Central Valley classify the mountain plover as rare and local, exceedingly rare, or accidental, within individual counties in the San Joaquin Valley (Edson and Hunting 1999; K. Hunting, California Fish and Game, pers. comm. 2003).

In the Imperial Valley, coordinated surveys occurred in February, November, and December 1999. The maximum effort of 26 observers in 15 parties over 2 days located 3,758 mountain plovers in December (Shuford *et al.* 2000). From January 9–19, 2001, 4,037 mountain plovers were counted by 2 observers in the Imperial Valley (Wunder and Knopf 2003), and 3,421 were counted there from January 29 to February 6, 2002, by 4 observers (S. Myers, AMEC Earth and Environmental, pers. comm., 2002). In the 2002 Christmas Bird Count (CBC) for that area only 12 were counted; surveys were abandoned in January 2003 when the birds could not be found following heavy rains (Knopf, pers. comm, 2003).

The only consistently collected information available to judge a population trend are the CBC data. The CBC data from 1955–1999 from all count circles in California reporting mountain plovers indicated a decline in mountain plovers of about 1 percent annually (J. Sauer, U.S. Geological Survey—Biological Resource Division (USGS–BRD), in litt. 2000; Wunder and Knopf 2003). This equates to a 35 percent decline in the population from 1955 to 1999 (J. Sauer, pers. comm. 2003). The CBC numbers fluctuate greatly from year to year based on observer variability, survey intensity, and the spatial and temporal distribution of mountain plovers (AMEC Earth and Environmental 2003).

Arizona, Texas, Nevada, and Mexico—Wintering mountain plovers also are reported from other areas, but in much lower numbers than are reported from California. From 1914 to the present, up to 340 mountain plovers have been reported during the winter from Cochise, Maricopa, Pima, Pinal, and Yuma Counties in Arizona (D. Shroufe, in litt. 1999). In Texas, up to146 mountain plovers were reported from Guadalupe, San Patricio, and Williamson Counties (J. Maresh, no affiliation, pers. comm. 1999; G. Lasley, American Birds, pers. comm. 1992). Mountain plovers also have been sighted throughout the year in Aransas, Concho, Kleberg, Nueces, Schleicher, Tom Green, and Val Verde Counties in Texas (P. Horner, in litt. 1997), and at Laguna Atascosa National Wildlife Refuge on the Texas coast (L. Laack, Service, in litt. 1992). About 400 wintering mountain plovers were reported in west Texas in 2003 (T. Fennell, unaffiliated, in litt. 2003). In Nevada, several mountain plovers were collected in the Lahontan Valley in 1940, and a few have been reported in the Fallon CBC circle in the 1990s (Alcorn 1946, *www.birdsource.org* 2000). In January 1992, researchers counted 148 mountain plovers at the north end of Laguna Figueroa, Baja California, Mexico (L. Stenzel, in litt. 1992). In 1994, mountain plovers were seen on a Mexican prairie dog colony in San Luis Potosi, Mexico (Gomez de Silva *et al.* 1996). In January 2000, 110 mountain plovers were found on black-tailed prairie dog colonies in Chihuahua, Mexico (S. Gillihan, in litt. 2003). Winter surveys for mountain plovers in Mexico completed during the past several years have failed to find any populations that approach the numbers found in California (R. Estelle, pers. comm. 1998).

In summary, with the heightened awareness to wintering mountain plovers during the past decade (including black-footed ferret recovery planning on prairie dog colonies in Mexico), and the mountain plover's winter flocking behavior, we believe it is unlikely that significant numbers of mountain plovers are not being detected. The widespread distribution of the species makes it difficult to obtain comprehensive population counts.

Previous Federal Action

On December 30, 1982, we designated the mountain plover as a category 2 candidate species, meaning that more information was necessary to determine whether the species status was declining, stable, or improving (47 FR 58458). In 1990, we prepared a status report on the mountain plover indicating that Federal listing may be warranted (Leachman and Osmundson 1990). We elevated the mountain plover to a category 1 candidate species in the November 15, 1994, Animal Candidate Notice of Review (59 FR 58982). At that time, category 1 candidate species were defined as those species for which we had sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. In 1996, we redefined candidate species and eliminated category 2 and 3 candidate designations (61 FR 64481). Candidate species were defined using the old category 1 definition. The mountain plover retained its candidate species designation as reported in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On July 7, 1997, we received a petition to list the mountain plover as threatened from the Biodiversity Legal Foundation. The Service responded by notifying the petitioner that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing may be warranted. Therefore, no 90-day finding was required for the Biodiversity Legal Foundation's petition. We published a proposed rule to list the mountain plover as threatened on February 16, 1999 (64 FR 7587), and requested that comments be provided by April 19, 1999. We announced public hearings for the proposal on April 19, 1999, and concurrently extended the comment period to June 21, 1999 (64 FR 19108).

Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day Notice of Intent to sue to the Secretary of the Department of the Interior and the Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. The Service responded to Earthjustice on December 21, 2001, with a commitment to submit an amended listing proposal for the mountain plover by September 30, 2002. On October 7, 2002, we agreed to prepare a document to reopen the public comment period for this listing decision by November 30, 2002; hence, the December 5, 2002, notice to reopen the comment period (67 FR 72396). On February 21, 2003, we extended the comment period to March 21, 2003 (68 FR 8487).

Summary of Comments Received on the Proposed Rules

In both the February 16, 1999, proposed rule (64 FR 7587) and the December 5, 2002, proposed rule (67 FR 72396), all interested parties were requested to submit factual reports or information that might contribute to the development of a final determination. Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Several newspaper articles appeared in Montana, Wyoming, and Colorado following our distribution of background materials to print media. We also solicited and received the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the biological and ecological information for the mountain plover. We received a total of 194 written comments on the 1999 proposed rule.

We distributed a press release to announce the 2002 proposed rule. We again solicited peer review of independent specialists regarding the listing proposal and special rule. We received a total of 65 written, e-mail, or telephone comments on the 2002 proposed rule.

In response to the 1999 proposed rule, public hearings were requested in Nebraska by the Forest Service; in Montana by the Phillips County Prairie Ecosystem Action Council, the Phillips County Board of County Commissioners, and Erin Crowder; and in Wyoming by the Park County Board of County Commissioners, Wheatland Irrigation District, Wyoming Farm Bureau Federation, Laramie County Conservation District, Platte County Resource District, Antelope Grange, Mountain Valley Livestock, Inc., Ultra Resources, and John and Phyllis Thalken.

Public hearings were held at the following locations and dates:

- Billings, Montana, May 26, 1999.
- Malta, Montana, May 25, 1999.
- Greeley, Colorado, May 25, 1999.
- Lamar, Colorado, May 26, 1999.
- Casper, Wyoming, June 2, 1999.

We received written and verbal comments from State and Federal elected officials, State and Federal agencies, nongovernmental organizations, and private citizens. We received a total of 52 comments at the 5 public hearings. Of the total 246 written and verbal comments received on the 1999 proposed rule, 136 opposed, 41 supported, 53 expressed concern about the proposal, and 16 sought a list of the references or requested public hearings.

Following release of the December 5, 2002, proposed rule, we received requests for public meetings from Congressman Bob Filner representing the 50th District of California, the Oklahoma Farm Bureau, the Kansas Farm Bureau, and the Nebraska Farm Bureau. Following discussions with each of these individuals, we held public meetings at the following locations:

- El Centro, California, January 23, 2003.
- Elkhart, Kansas, February 5, 2003.

The Service distributed news releases announcing the meetings in El Centro, California, and Elkhart, Kansas, on January 16, 2003, and January 29, 2003, respectively. Notification of the Elkhart meeting also appeared on the local access television station within the Elkhart, Kansas, viewing area.

We received a total of 11 verbal comments from the 2 public meetings held in 2003. Of the total of 75 verbal and written comments received on the December 5, 2002, proposed rule, 25 comments opposed the listing proposal, 15 supported the proposal, 24 expressed concern, and 11 requested an extension of time or public hearing.

All written and verbal comments presented at the public hearings and received during the public comment period, including peer review comments, were considered in preparing this final determination. Most of the comments opposing the action criticized the quality of the science used to support the proposal, stated that we did not thoroughly address each listing factor, noted the potential for the Federal listing to restrict activities on both public and private lands, and suggested that listing should be delayed to allow other alternatives to work to conserve the species (*e.g.*, conservation agreements). Some comments also challenged the value of listing the species, and argued that listing the mountain plover will conflict with other species' conservation efforts and the implementation of other Federal programs. Other respondents supported listing because of the decline in the distribution and numbers of mountain plovers and the potential future natural or man-caused actions to result in further decline of the species, and also asked that critical habitat be designated. Each of the five peer reviewers (three in

1999, two in 2002) indicated that the proposed rule contained sufficient scientific information to support proposed listing. We have consolidated similar comments, organized them by central themes, and provide our responses below.

Listing Decision Statute Issues

Comment 1: The Service has violated statutory intent by not complying with 'the best information available' standard, has inappropriately 'piggybacked' a new proposal on the 'stale' 1999 proposal, and has shown deferential treatment to environmental organizations, evidenced by the settlement agreement with Earthjustice.

Response 1: This final determination presents a significant amount of new information that has become available since the 1999 proposed rule, including new information that caused us to discount Breeding Bird Survey (BBS) trends as statistically insignificant, and to reconsider what we earlier proposed as threats on agricultural lands on the breeding grounds. The settlement agreement does not reflect preferential treatment, but rather an appropriate means to resolve litigation where the final determination was overdue.

Comment 2: E-mails, personal communications, and letters do not meet the 'best information available' standard as described in Service policy (59 FR 34271).

Response 2: Our policy, as cited above, requires that we evaluate all scientific and other information available, which may include both published and unpublished materials, in the development of a listing action. We review the information, regardless of origin, and determine whether it is reliable, credible, and represents the best information available regarding the species under review. We must document our evaluation of any information we use in reaching our decision, whether it supports or refutes that decision.

Biased Decision Issues

Comment 3: Several commenters stated that our analysis of the mountain plover population trend data, grassland conversion statistics, oil and gas development projections, prairie dog population data, and other issues, are specific examples of the Service's use of 'selective science.' The commenter believe the Service has 'selected science' to defend a listing position in the proposed rules, while ignoring information that defends the withdrawal of the listing proposal.

Response 3: During the two public comment periods in 2002 and 2003, we received numerous comments from affected States and other interested parties. We have based our decision on our review of all the pertinent information we received. This determination includes new and additional information, including research results, that was not available for the proposed rule.

Comment 4: The multiple-clutch breeding system of the mountain plover influences the annual fluctuation in the population, and prepares the mountain plover for a changing environment.

Response 4: Multiple-clutching is believed to be a strategy that allows the mountain plover to respond to abundant prey (Graul 1973) which can, therefore, result in annual fluctuations in mountain plover numbers at individual breeding locations. We agree that annual fluctuations in mountain plovers may be in response to prey, but the affect of multi-clutching on population trends is unknown.

Comment 5: The Service understated the effects of predation on mountain plovers, did not consider the invasion by red fox *(Vulpes vulpes)*, and did not describe what is going to be done to reduce predation effects on mountain plovers. Predation has a much greater effect on the mountain plover population than losses on croplands.

Response 5: We have revised the section on predation to include red fox as a potential predator, and assess the implications of predation to mountain plover conservation. However, red fox are not typically associated with habitats occupied by mountain plovers.

Comment 6: The Service has not identified or quantified actual threats and, therefore, has not shown that mountain plovers have declined or are at risk.

Response 6: The commenter is correct that we have not quantified the threats to the mountain plover or the number of individuals lost as a result of each threat. We have based our determination to withdraw on the wide distribution of the mountain plover and the relative security of the species from present or foreseeable threats across its current range.

Habitat Characteristics Issues

Comment 7: Mountain plovers are not at risk when nesting on croplands. Current agricultural practices are beneficial to the mountain plover.

Response 7: In the 1999 proposed rule, we stated that agricultural practices on cultivated lands may contribute to the decline of mountain plovers. Research has confirmed that some nests are lost to some cultivation practices (Dreitz and Knopf, in litt. 2003). As reported in this final determination, preliminary research findings from Colorado suggest that nesting success on cultivated lands does not differ significantly from nesting success on grassland nesting sites (Dreitz and Knopf, in litt. 2003). We agree that nesting success on some croplands is similar to that found on grasslands, but the relative influence of each landscape on mountain plover population recruitment has not been determined.

Comment 8: Cultivated lands provide habitat where none existed before.

Response 8: Cultivated lands have replaced grasslands within the historic breeding and wintering range of the mountain plover. Hatching success on cultivated lands and grasslands appears to be similar in the southern portion of the breeding range.

Comment 9: Mountain plovers are an adaptable species, and have effectively shifted from grasslands to cultivated lands in many breeding and wintering areas. Cultivated lands, not grasslands, are now the most important habitat for mountain plovers at both breeding and wintering locales.

Response 9: See response to Comments 7, 8, and 21.

Comment 10: The role of insect availability has not been thoroughly evaluated, particularly given that livestock dung is less abundant than bison dung, and the prevalence of dung influences insect abundance. Also, systemic insecticides are used on cattle, which reduces insect availability.

Response 10: We agree that the role of insect availability has not been thoroughly evaluated. However, no information has been provided to show that insect abundance or diversity have been significantly modified by the replacement of bison with domesticated livestock, or that the use of systemic pesticides influences insect abundance or composition.

Comment 11: Mountain plover habitat is provided by several factors such as low moisture, drought, herbivory, fire, and grazing. In Montana, unique soil types are the key element in defining suitable mountain plover habitat. Prairie dog colonies are not the only suitable habitat.

Response 11: We agree that numerous factors can provide suitable mountain plover habitat. We agree that soils are important to providing the vegetation and bare ground required by nesting mountain plovers. For example, Beauvais and Smith (2003) stated that poor soil, low precipitation, and wind scour help provide the proportion of bare ground needed by nesting mountain plovers in the Jack Morrow

Hills area of southwest Wyoming. However, the literature also is replete with examples documenting the association of mountain plovers with prairie dogs (*e.g.*, Dinsmore 2001, Knowles 1999, Kotliar *et al.* 1999).

Comment 12: Habitat fragmentation and isolation increase the mountain plovers vulnerability to random natural and human-caused events.

Response 12: No scientific information specifically discusses the influence of fragmentation or isolation on the persistence of mountain plovers at currently occupied breeding and wintering sites.

Comment 13: The anticipated growth at South Park will impact mountain plovers and their habitat.

Response 13: Complete development of South Park into private homes would probably adversely impact mountain plover. However, the anticipated growth at South Park will be low-density residential development, and full build-out is not anticipated in the foreseeable future since the current human population in Park County is small (16,000 people). It also is likely that conservation efforts ongoing in South Park will preserve important mountain plover habitat. Consequently, we believe potential threats to mountain plovers that might result with development will be offset by conservation measures implemented at the State and county levels.

Mountain Plover Distribution Issues

Comment 14: All suitable habitat on private and public lands throughout the breeding range of the mountain plover has not been thoroughly inventoried. Additional searching in the breeding range has consistently found more mountain plovers.

Response 14: We have revised the population estimates for individual States based on new information from commenters and literature. We agree that surveys on all private lands in the breeding range could reveal additional birds. For that reason, in addition to the birds' flocking tendencies in winter, and 44 years of CBC data, we base our total population estimate on counts from wintering habitat in California, not on a summation of counts from breeding locales. Mountain plovers occurring at undetected breeding locations would be expected on the winter habitat from October through mid-March. This estimate assumes that most of the birds winter in California.

Comment 15: All wintering areas in the United States or Mexico have not been located. Further searching will yield more wintering sites and more mountain plovers.

Response 15: All historic and current information we have reviewed support California as the key wintering location for mountain plovers, with many fewer numbers occurring elsewhere. Searches for mountain plovers on wintering grounds in Mexico have been ongoing for the past several years. We agree that additional searching is likely to find other sites used by mountain plovers, but we believe that finding large numbers of wintering mountain plovers will be highly unlikely, given the level of effort dedicated in the United States and Mexico over the past decade to locating mountain plovers. We have revised this section of our determination to cite new information provided during the comment period.

Mountain Plover Total Population and Trends Issues

Comment 16: The mountain plover is declining throughout its range, and its current abundance is low compared to other bird species.

Response 16: The CBC data from wintering grounds in California identify a slow decline in mountain plover abundance the last 44 years. However, the numbers vary widely from year to year, and their accuracy cannot be determined with any certainty.

Comment 17: The population estimate in the 1999 and 2002 proposed rules is just "a guess" and is not reliable.

Response 17: The majority of wildlife population numbers are estimates, because it is rarely possible to count all the individuals of a species to develop a precise population number. We have relied on practices accepted in conservation science, using the best information available to us, to provide the public with a total population estimate. The total population estimate of 8,000 to 10,000 individuals was made by Dr. Fritz Knopf, a Senior Scientist with USGS–BRD in Fort Collins, Colorado. Dr. Knopf has been studying mountain plovers since 1986, and has published widely on the mountain plover throughout its range. We believe he is well qualified to make a population estimate. Dr. Stephen Dinsmore, who recently completed his doctoral research on mountain plovers in Montana, agrees with the population estimate. The only other estimates available are those we have developed for individual States in the breeding range based on other sources of information.

The estimate is based on a 1-day coordinated survey on the winter habitat in 1994, which was conducted by 95 observers covering 25 sites in 9 counties. In addition, both planned and incidental searches to locate and report mountain plovers in California have been ongoing for decades.

Many respondents challenged the reliability of the population estimate because of its reliance on a 1-day winter survey, and its failure to include the numerous mountain plovers that they believe occur on private lands throughout the nesting range. Counting animals on their winter habitat is an accepted technique for estimating the abundance of many species, with migratory waterfowl and big game being two examples. The survey coordinated by the National Audubon Society in California was a legitimate approach to monitor a wintering species, and represented a new effort to count mountain plovers.

The commenters are correct in stating that the population estimate alone cannot be used as a basis for listing. We have provided the abundance and distribution information to give the public a better sense of the status of the mountain plover.

Comment 18: How can the Pawnee National Grassland and Charles M. Russell National Wildlife Refuge be important when so few mountain plovers occupy these sites?

Response 18: We emphasized the significance of the Pawnee National Grassland because of its historic importance to the mountain plover, its Federal ownership and management, and its potential contribution to mountain plover conservation. We identified the Charles M. Russell National Wildlife Refuge because of its location in Phillips County, Montana, an area with suitable and potentially suitable habitat and currently one of the largest breeding mountain plover populations. We believe each of these properties, with proper management, can make significant contributions to mountain plover conservation on public lands.

Comment 19: The Service did not acknowledge that Dr. Walter Graul's 1976 population estimate for the Pawnee National Grassland is now considered inaccurate.

Response 19: We discussed this issue with Dr. Graul in preparing this final determination. The commenter correctly notes that subsequent to Dr. Graul's 1976 estimate of 20,000 mountain plovers on the Pawnee National Grassland, he stated that it may have been off by an order of magnitude. Dr. Graul provided the 1976 estimate to satisfy a request of the American Ornithological Union to establish a relative magnitude of abundance for the mountain plover. However, Dr. Graul believes that mountain plovers were much more numerous during his

research than have been noted in recent years by himself or Dr. Fritz Knopf. Consequently, while our use of historic numbers to show a declining trend at the Pawnee National Grassland can be challenged, Dr. Graul and Dr. Knopf both agree that a significant decline has been evident since the late 1960s. We have revised the appropriate section of the final determination.

Comment 20: The present and future change in winter habitat in California is a significant range-wide threat to mountain plovers.

Response 20: As described in this final decision, we do not believe the anticipated conversions of cultivated and noncultivated habitats in California will have an immediate significant impact on wintering mountain plovers throughout California. We discussed this issue with Dr. Fritz Knopf for preparation of this final determination (F. Knopf, pers. comm. 2003). Dr. Knopf agreed that winter habitat does not appear to be limited, but acknowledged that habitat quality may not be similar among all cultivated and noncultivated lands. Mountain plovers are opportunistic foragers while they occupy winter habitat, and have the ability to seek suitable habitats available over a wide area. Knopf and Rupert (1995) determined that mountain plovers prefer noncultivated sites to cultivated lands, and others have observed that mountain plovers appear to select unique characteristics (E. Marquis-Brong, BLM, in litt. 1999). However, given that cultivated habitat is pervasive throughout the Imperial and Central Valleys, we do not believe the current rate of conversion represents an imminent threat to mountain plovers.

Comment 21: Mountain plover numbers are very dynamic, and their current abundance merely reflects a normal fluctuation.

Response 21: We agree that mountain plover abundance at local breeding areas can fluctuate annually based on local environmental conditions.

Comment 22: Population fluctuations due to climatic events should be considered temporary and not a justification for listing.

Response 22: The Service must consider all factors, natural or human-caused, that may contribute to a species' survival and recovery. We agree that climatic events may affect localized populations, either positively or negatively, on a temporary basis. Presently, it is believed that climatic events on the Pawnee National Grassland have negatively influenced mountain plover abundance there.

Comment 23: The BBS data are not reliable. The 2002 proposed rule stated that new BBS information was available, but new BBS information could not be found.

Response 23: The 1999 proposed rule cited literature published by Dr. Fritz Knopf, which used published BBS trend analyses reporting the mountain plover declining throughout its range, and declining more rapidly than other grassland endemic birds. His conclusions were based on the BBS data for the periods from 1966 to 1993. The 1999 proposed rule also cited an analysis by Dr. John Sauer with the USGS–BRD, showing that for the period 1966 to1996, the BBS trend analysis yielded a statistically significant estimated annual rate of decline of 2.7 percent. Because of the numerous comments we received on the 1999 proposed rule regarding the BBS data, we requested a review of the data by the USGS–BRD, which is the Federal agency responsible for administering the BBS program.

According to Sauer (in litt. 1999), the survey-wide trend analysis lacked statistical confidence due to the wide variability in mountain plovers reported from individual routes in each of the years from 1967 to 1998. We concluded that, although the BBS is the only long-term trend information available in the breeding range, it is not a statistically reliable indicator of mountain plover population trends.

Comment 24: A commenter criticized the 30-year-old National Wildlife Refuge records because of a lack of information, the variability in observer experience, and inconsistency in survey routes followed.

Response 24: In 1992, we received a report from the Kern National Wildlife Refuge that consolidated mountain plover observations and discussed their historic and current status on the Kern and Pixley National Wildlife Refuges in California (J. Engler, Service, in litt. 1992). The report included observation records from 1961 to 1991, and lacked data for many years during that period. The records of mountain plover sightings from the refuges were collected during inventories for waterfowl, which included observations of migrating shorebirds and other species. It is common for annual waterfowl surveys to be conducted by different people, given staff turnover and personnel availability. However, refuge biologists are thoroughly trained in bird identification, and, more importantly, because the mountain plover was known as a regular resident of these refuges, we are confident that the biologists completing the survey were able to correctly identify mountain plovers when encountered. We agree that the refuge data provide an approximate estimate rather than a precise number of mountain plovers wintering on the refuge.

Comment 25: The CBC data are unreliable because count circles are not always the same over time, errors have been published by American Birds, the number of individuals reported could be wrong, and the wrong species can be reported.

Response 25: We agree that CBC numbers fluctuate greatly from year to year based on observer variability, survey, intensity, and the spatial and temporal distribution of mountain plovers. We contacted Mr. Geoff LeBaron of the National Audubon Society, who is in charge of the CBC surveys and is responsible for analyzing the data; he is familiar with the suggested limitations (G. LeBaron, National Audubon Society, pers. comm. 1999). Mr. LeBaron agreed that some count circle centers may change over time, due to encroachment of development within the count circle and, therefore, may not be completely "static" over the entire period of record. However, he did not believe this seriously compromises the quality of the data for the geographic area over the long term. He also agreed that the other limitations cited by the commenter can occur when field data are being evaluated for species that occupy similar habitats, or are similar taxonomically. However, because the mountain plover is unique in these respects and, therefore, unlikely to be confused with any other species by experienced observers, he does not believe any of these limitations apply to the mountain plover. The Anadarko Petroleum Corporation retained Dr. Mark Boyce to analyze the CBC data (M. Boyce, University of Alberta, in litt. 2003). Dr. Boyce's analysis did not refute the conclusions of Dr. John Sauer with USGS–BRD (in litt. 2000). We have revised the section in this final determination to report additional information regarding the CBC.

Comment 26: Population trends of the mountain plover at the Pawnee National Grassland are indicative of the total population trend.

Response 26: There is no scientific evidence to support the claim that the precipitous decline documented at the Pawnee National Grassland has influenced the total mountain plover population.

Comment 27: The mountain plover's short lifespan makes the species vulnerable to decline.

Response 27: There is no scientific evidence to support the commenter's claim that the mountain plover's risk of

extinction is exacerbated by a short lifespan.

Grassland Conversion Issues

Comment 28: Grassland conversion has destroyed mountain plover habitat and resulted in a decline in mountain plovers.

Response 28: We are unable to precisely quantify the amount of mountain plover habitat that has been lost due to agricultural conversions and, therefore, are unable to precisely quantify the impact to mountain plovers. We do not believe the present or future conversion of grasslands is an imminent threat to all mountain plover breeding locations, throughout the species' range.

Comment 29: The Service overstated the loss of grasslands as an impact on breeding mountain plovers, because the rangeland loss reported in the 2002 proposed rule is minuscule relative to total rangeland available. This means that the impact to mountain plover habitat is even smaller and, therefore, of no consequence.

Response 29: We agree that most grassland conversion occurred prior to 1982, and that the proportion of rangeland lost to total rangeland from 1992 to 1997 is small. We have revised the section of the final determination addressing grassland conversion.

Comment 30: The Service inappropriately analyzed the National Resource Inventory database in its description of rangeland conversion loss, and the implications to mountain plover habitat.

Response 30: Because we are unable to precisely differentiate mountain plover habitat from among the NRI cover types, the NRI data are of little value in clearly and concisely assessing the degree of threat to mountain plovers or their habitat. We have revised the section of the final determination.

Comment 31: Some commenter stated that the presence of thousands of acres of Conservation Reserve Program (CRP) lands represents a threat to mountain plover habitat. Other commenter complained that the Service has not given credit to the thousands of acres of grassland created by the CRP.

Response 31: The CRP administered by the Department of Agriculture allows producers to retire lands for 10-year periods to remove highly erodible soils from production, thereby benefitting wildlife and other resources. As of 1992, 2,002,000 ha (4,946,000 ac) of land were enrolled in the program in Colorado, Montana, and Wyoming, and most of these lands were planted to grass (Berlinger and Knapp 1991, Lesica 1995). The wildlife that benefit most from these practices (such as ring-necked pheasant, northern bobwhite, and western meadowlarks) are those associated with tall vegetation (Schenck and Williamson 1991), although within each State, the Department of Agriculture has the ability to plant a variety of grass species, including short grasses that benefit mountain plover.

Comment 32: Wintering habitat is becoming a limiting factor. The historic conversion of grassland in California impacted mountain plovers, and future modifications of crop types, agricultural practices, or urbanization will have additional impact.

Response 32: Mountain plovers demonstrate some flexibility on winter habitat. Wunder and Knopf (2003) reported that agricultural practices on croplands in the Imperial Valley are critical to wintering mountain plovers, although Knopf and Rupert (1995) concluded that grasslands were preferred by wintering mountain plovers to agricultural fields in the Central Valley. While not all of the croplands are suitable foraging habitat, and modification of practices on croplands used for foraging could be detrimental to some mountain plovers, we do not believe the rate of conversion occurring now is having a significant influence on the total abundance of mountain plovers throughout California.

Livestock Grazing, Range Management, and Farming Issues

Comment 33: Range management is a factor in the historic decline of mountain plovers, and represents a current threat to existing mountain plover populations. Grazing practices now are very similar to those that were adopted decades ago.

Response 33: The prevailing grazing management standards adopted by Federal agencies and grazing associations tend to maximize forage production and diminish excessive disturbance to grass and soil. Such practices can be detrimental to mountain plovers, although we have no information to indicate this is happening on a broad scale across the species' range.

Comment 34: The Service incorrectly stated that the Forest Service has no schedule for revising grazing management prescriptions on the Pawnee National Grassland.

Response 34: This final determination has been corrected to report our recent coordination with the Forest Service regarding their planned revisions to range allotment management plans on the Pawnee National Grassland, which are designed in part to enhance mountain plover breeding habitat.

Comment 35: Since farming practices have not changed in 50 years how can there be any impact to mountain plovers?

Response 35: We recognize there are numerous small farming and ranching operations that have retained historic practices that may benefit mountain plovers. As a result of a variety of factors, including more advanced technology and more effective agricultural chemicals, the average farm size has increased. As the farms have gotten larger, it is no longer feasible to till and plant a field within a short period of time. Consequently the lands are tilled in early spring when suitable habitat for mountain plover nesting is present. Therefore, some nests are at risk from spring tilling if measures are not taken to avoid nests. This final determination describes the implications of current farming practices to mountain plover conservation.

Issues Related to Prairie Dogs

Comment 36: We received numerous comments on the Service's discussion of mountain plovers and prairie dogs, the abundance and distribution of prairie dogs, and the role of prairie dogs in the historic and current status of the mountain plover.

Response 36: This final determination cites published literature, expert opinion, and other sources of available information to describe the association of mountain plovers and prairie dogs. Of the many comments received addressing prairie dogs, only one provided detailed information to challenge our discussion regarding the distribution of mountain plovers on prairie dog colonies in Montana. Recently, research completed in southern Phillips County, Montana, affirmed a strong association of mountain plovers with prairie dogs (Dinsmore 2001). Therefore, based on our review of the information available, we continue to believe breeding mountain plovers are strongly associated with prairie dogs in Montana. We have revised the section on prairie dogs to report new information.

Comment 37: The Service grossly underestimated the abundance of prairie dogs and, therefore, grossly underestimated the abundance of mountain plovers.

Response 37: The Wyoming Department of Agriculture is correct that the current estimate of black-tailed prairie dogs in Wyoming is greater than earlier Service estimates. However, it does not follow that the mountain plover population is proportionately underestimated. As stated above, we base our total mountain plover

population estimate on winter counts, not availability of breeding habitat. We have revised the final determination to acknowledge the new estimates for prairie dogs, and discuss the implications of prairie dog abundance to mountain plover viability.

Comment 38: Prairie dog poisoning has increased.

Response 38: The Service has new information to suggest that poisoning of black-tailed prairie dogs may have increased in some States in the mountain plover's range (Service 2002.). We have revised this section of the final determination to conclude that while prairie dog poisoning may have increased locally, it does not represent an imminent threat to mountain plovers throughout their breeding range.

Comment 39: Prairie dog shooting is a threat to mountain plovers.

Response 39: We agree that shooting black-tailed prairie dogs has been shown to reduce prairie dog abundance at some locations. However, it has not been shown to be a significant threat to maintenance of black-tailed prairie dog colonies (Service 2002.). While it has the potential to degrade or prevent recovery of habitat and impact mountain plover breeding success, we believe those instances are localized and infrequent. We have no information to indicate that the incidental shooting of mountain plovers is significant.

Mineral Development Issues

Comment 40: Oil and gas development, including coalbed methane, is a potential significant threat to mountain plovers.

Response 40: This final determination provides information describing the potential effects to mountain plovers from oil and gas development. The degree of effect depends on the density of mountain plovers and level of oil and gas development within a project area.

Comment 41: The presence of mountain plovers at the Antelope Coal Mine in Wyoming is evidence that mining does not impact mountain plovers.

Response 41: We have revised the final determination to report new information from the Antelope Coal Mine, including its potential effects on mountain plovers.

Pesticide Issues

Comment 42: Inclusion of grasshopper control as a potential threat is not valid because the rule admits that Federal grasshopper control programs have been abandoned.

Response 42: The Animal and Plant Health Inspection Service (APHIS) has recently authorized rangeland grasshopper control, and control of grasshoppers can occur when they reach economic thresholds. We have revised the final rule to report new information regarding pesticide exposure from grasshopper control and from California wintering habitat.

Regulatory Mechanisms

Comment 43: Existing regulatory mechanisms are inadequate to protect the mountain plover.

Response 43: We have no evidence that the existing regulatory mechanisms have contributed to the decline of the mountain plovers throughout a significant portion of their range. The Forest Service and the BLM routinely include the mountain plover in their planning documents to ensure that activities they authorize do not contribute to the further decline of the species. The NRCS has prepared a fact sheet for the mountain plover to encourage farmland practices beneficial to the mountain plover. The Service is developing a dialogue with all Federal agencies to ensure that measures are included in land management plans to protect and promote the conservation of the mountain plover. Federal listing would not add significant conservation benefit above those efforts presently adopted by Federal agencies.

Peer Review

In compliance with the July 1, 1994, Service Peer Review Policy (59 FR 34270), peer reviews were provided by five specialists. The peer reviewers in 1999 were Dr. Marshall Howe with USGS-Patuxent Wildlife Research Center, Dr. C.R. Preston with the Draper Museum of Natural History in Cody, Wyoming, and Dr. James Dinsmore with Iowa State University in Ames, Iowa. Each of these peer reviewers concluded that there was sufficient information to list the mountain plover as threatened. The reasons cited by the peer reviewers included small population and declining trend of the species, prairie dog distribution and decline, habitat loss to grassland conversion, the influence of cropland nesting efforts on mountain plover conservation, and pesticide exposure.

Two peer reviewers provided comments to the 2002 listing proposal. One peer review was provided by Dr. Peter Paton with the University of Rhode Island in Kingston, and the second peer review was provided by Mr. Steve Forrest with Hyalite Consulting in Bozeman, Montana. Mr. Forrest was selected by Earthjustice following the settlement agreement reached between the Service and Earthjustice to expedite a listing decision for the mountain plover. Both of these peer reviewers also supported the proposal to list the mountain plover. The issues identified by each of them were similar to those received from the peer reviewers in 1999, but also included attention to other specific issues such as declines in Weld County, Colorado, Montana, and Thunder Basin National Grassland in Wyoming, as well as habitat fragmentation, prairie dog shooting, and the proposed special rule.

Since the 1999 listing proposal and following the 2002 re-opening of the comment period, we have acquired additional information regarding the concerns identified by each of the peer reviewers, as disclosed in this final determination.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the mountain plover rangewide are discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historical and Current Conversion of Grassland in Breeding Range

As described in the 1999 and 2002 proposed rules, the historic conversion of grassland to cropland likely contributed to the decline of mountain plovers and their habitat (*e.g.*, Graul and Webster 1976, FaunaWest 1991, Knopf and Rupert 1999b). To assess more recent grassland conversion, we reviewed information available from the National Resources Inventory (NRI) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) between 1982 and 1997. We selected the "rangeland" cover type because "native grassland" is not a type category within the data base specifically, but is represented under the rangeland category. Comprehensive NRI data is only available from 1982 through 1997 (NRCS 1998; K. Musser, NRCS, in litt. 2000; K. Musser, pers. comm 2002). We used only areas occupied by mountain plovers in their breeding range to compare the rangeland conversion statistics (Knowles and Knowles 1998, Shackford and Leslie 1995).

From 1982 to 1997, rangeland decreased in Colorado by 217,200 ha (536,700 ac), in Kansas by 14,852 ha (36,700 ac), in Nebraska by 14,326 ha (35,400 ac), in Oklahoma by 16,512 ha (40,800 ac), in Montana by 59,894 ha (148,000 ac), and in Wyoming by 18,090 ha (44,700 ac). More acres were converted prior to 1992 in all States except Nebraska and Montana, where acres converted after 1992 were about the same or more than doubled, respectively. The total lands converted are a small fraction of the total rangeland. While the best information available does not allow us to quantify the acres of occupied mountain plover habitat converted, using the rate of rangeland conversion, we believe native grassland conversion is small and does not pose a substantial threat to mountain plovers.

The Montana Fish, Wildlife and Parks expressed concern over conversion of native habitat in Montana (P. Graham, Montana Fish, Wildlife and Parks, in litt. 1999). For example, Knowles and Knowles (2001) reported that a total of 13 percent of the land area in their central Montana study area has been converted from native grass from 1991 to 1999, and that mountain plovers have abandoned all but one of the sites that were converted. Mountain plovers in the central Montana study area declined from more than 100 in 1992 to about 70 individuals in 2000, as a result of grassland conversion (Knowles and Knowles 2001; C. Knowles, pers. comm. 2003).

Mountain plovers nest successfully on croplands in Colorado and perhaps contiguous States (V. Dreitz and F. Knopf, in litt. 2003; Shackford *et al.* 1999). While the findings are preliminary and represent a small percentage of total croplands in eastern Colorado, they suggest that existing croplands and grasslands in the southern portion of the breeding range may be of equivalent value to nesting mountain plovers (V. Dreitz and F. Knopf, in litt. 2002). In Montana and northern Wyoming, nesting on cultivated land has not been observed (Knowles and Knowles 2001; Shackford *et al.* 1999). However, since the amount of rangeland converted is small (NRCS 1998), we conclude that the impact to mountain plovers in Montana and northern Wyoming is comparably small, regardless of how cultivated land is used by mountain plovers in those states.

In some areas in the mountain plover breeding range, grasslands are being converted to housing subdivisions. Of some concern is development of nesting habitat in South Park, Park County, Colorado, where the mountain plover population is now estimated to be about 2,300 individuals, which is the largest known remaining concentration of mountain plovers in the breeding range (Wunder *et al.* in prep.). The known breeding sites in South Park are vulnerable to ongoing and proposed future residential development. Full build-out of those sites currently subdivided would be detrimental to mountain plovers (Sherman *et al.* 1996, Granau and Wunder 2001). However, it is unknown how extensive future development will actually be or how fast it will proceed, such that while it is a potential threat we have no reason to believe that it means the species is likely to be in danger of extinction in the foreseeable future. It also is likely that private conservation efforts ongoing in South Park will preserve important mountain plover habitat.

Cultivated Areas in Breeding Range as Potential Population Sinks

In the 1999 proposed rule, we stated that we believed cultivated lands in the southern portion of the breeding range created population sinks for the mountain plover, contributing to species decline. In an effort to better define the implications to mountain plover survival, research was initiated on cultivated fields and rangelands in five counties in eastern Colorado in 2001 (T. McCoy, in litt. 2001). Preliminary data analysis indicates that nest success is comparable between cropland and rangeland (V. Dreitz and F. Knopf, in litt. 2003). Nest failure was attributed principally to tillage and predation on cropland, and to predation on rangeland (V. Dreitz and F. Knopf, in litt. 2002). However, while hatching success on croplands and grasslands is similar in the southern portion of the breeding range, comparable data on juvenile survivorship are not available so mountain plover reproductive success on cropland relative to grasslands is not fully known (V. Dreitz and F. Knopf, in litt. 2002; Knopf, in litt. 2003).

Historical Conversion of Grassland in Wintering Range

Historically, mountain plover habitat in the Central Valley was lost following the decline of grazing elk, pronghorn, burrowing kangaroo rats, ground squirrels, and other mammals. The combined activities of these herbivores maintained suitable habitat conditions for mountain plovers, closely mimicking habitat characteristics found on breeding habitats (Knopf and Rupert 1995). Elk are now extirpated from the Central Valley, and pronghorns, once extirpated, have recently been reintroduced into the Carrizo Plains (BLM *et al.* 1995). The federally-listed giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) have declined to about 2 percent and 1 percent of their former range, respectively, due primarily to conversion of grassland habitat to agriculture and urbanization, and secondarily due to other incidental human activities and control of California ground squirrels (W. White, Service, in litt. 2001a; 52 FR 283; S. Jones, Service, pers. comm. 2003). The occupied range of each of these species in the San Joaquin Valley overlaps the described wintering range of the mountain plover. Currently, it is estimated that giant kangaroo rats may occupy about 11,145 ha (27,540 ac) and the Tipton kangaroo rat may occupy about 25,000 ha (63,000 ac) (Service 1998). While we cannot measure the degree of impact to mountain plovers resulting from the loss of these mammals, we believe any further loss would be detrimental to the species by further reducing natural habitats.

Native grasslands in the San Joaquin Valley have been nearly eliminated. Of nearly 1,800,000 ha (4,400,000 ac) of native grasslands present prior to extensive settlement, no more than 600 ha (1,500 ac) remained in 1972 (Moore *et al.* 1990). This loss of grasslands has been paralleled by a loss of other natural habitats, with the total of all uncultivated lands in the San Joaquin Valley now occupying less than 61,000 ha (150,000 ac) (Service 1998).

Mountain plovers wintering in the San Joaquin Valley prefer native Valley sink scrub and nonnative grasslands over any of the more commonly cultivated land types (Anderson *et al.* 1991; Knopf and Rupert 1995) when the grasslands are grazed or burned (Knopf and Rupert 1995). These preferred habitats occupy less than 26,000 ha (66,000 ac) of the San Joaquin Valley (Anderson *et al.* 1991). Mountain plovers in the San Joaquin Valley depend on these core areas of uncultivated lands in October and November (Engler, in litt. 1992; Knopf and Rupert 1995), and further loss of these areas would be detrimental to the species (Knopf and Rupert 1995).

Mountain plovers use cultivated croplands in the Imperial Valley of California, where in recent years (except the winter of 2002–03 when excessive rain prevented it) greater than 50 percent of all individuals of the species wintered (Wunder and Knopf 2003). Until agricultural development began in the 1940s, this historically desert region was not known to support the species. Here, 37 percent of the mountain

plovers forage and roost on grazed or sprouting alfalfa fields; 34 percent roost on short-term fallowed fields; and 13 percent forage on burned bermuda grass fields, while ungrazed alfalfa, unburned bermuda grass, melon and vegetable fields are rarely or never used (Wunder and Knopf 2003).

Other habitats within the historic wintering range of the mountain plover have been modified by modern livestock grazing practices that maintain grass height that is higher than what mountain plovers can use. This is the situation in the Carrizo Plain, which is recognized as a predictable wintering area and historically may have provided up to 50 percent of suitable plover wintering habitat. No more than 10 percent of the Carrizo Plain's 103,000 ha (254,000 ac) was suitable for mountain plovers in the early 1990s (S. Fitton, in litt. 1992; BLM *et al.* 1995), but that figure has increased in recent years due to lower precipitation (S. Fitton, pers. comm. 2003). Habitat availability there appears to be linked to a combination of livestock grazing management and precipitation.

We were unable to precisely quantify the acres of mountain plover wintering habitat converted to other uses annually because a data base quantifying mountain plover habitat does not exist. However, information from the California Department of Conservation confirms the routine conversion of existing croplands to vineyards, orchards, and other uses. For example, from 1990 to 2000, the acreage of vineyards in California nearly doubled to a total of 230,000 ha (570,000 ac) (M. Penberth, California Department of Conservation, in litt. 2003). In nine counties in the Central Valley where mountain plovers are now reported as "rare and local," the acres in vineyards increased by about 25 percent (31,000 ha (76,000 ac)) from 1990 to 2000 (Edson and Hunting 1999; M. Penberth, California Department of Conservation, in litt. 2003). Conversion to vineyards represents a loss of potential habitat, although the extent of use by plovers prior to conversion is unknown.

Urban development destroyed most noncultivated, historic coastal mountain plover winter habitat (Wunder and Knopf 2003), and anticipated urbanization and water transfers from rural to urban areas may impact the remaining natural habitats, as well as to existing cropland habitats in both the Central and Imperial Valleys. In California, the U.S. Census Bureau (2003) projected a 52 percent (17 million) population increase from 2000 to 2025. Based on past trends, considerable population growth is expected to occur in the Central Valley (American Farmland Trust 2003, Hunting *et al.* 2001). The Imperial County population is expected to nearly double by 2020 (American Farmland Trust 2003). In the Imperial Valley, the North American Free Trade Agreement is expected to generate increased trade growth, and highway projects are now being planned to improve transportation efficiency (California Department of Transportation 2001). As a result of the anticipated population growth, the American Farmland Trust (2003) designated the Imperial and Central Valleys 2 of the top 20 threatened farming regions in the Nation. However, between 1982 and 1992, only 8,000 ha (19,000 ac) of land in Imperial County were converted to urban uses. The present impacts to farm land in Imperial County have had no measurable impact on wintering mountain plovers. For example, the Service completed a draft biological opinion for a proposed transfer of water from the Imperial Valley to southern California coastal communities (P. Sorensen, Service, in litt. 2003). It is presently estimated that if the water transfer occurs, 12,000 to 32,600 ha (30,000 to 80,500 ac) of bermuda grass sod farms and alfalfa could be fallowed each year (C. Roberts, Service, pers. comm. 2002; P. Sorensen, in litt. 2002), which we calculate would be from 15 to 39 percent of the available foraging habitat described by Wunder and Knopf (2003). However, because of the mild winter climate in the Imperial Valley, crops are not fallowed for long periods of time. Land that is fallow 1 month may be tilled the next, presenting a shifting mosaic of foraging habitat for plovers. Because it is unclear whether the water transfer will occur and whether it will reduce foraging habitat for mountain plovers in the Imperial Valley, we cannot conclude that loss of cropland or modification of current practices threatens the species in the foreseeable future.

In summary, although most natural habitat used by mountain plovers in California has been destroyed, some crops that have replaced it provide foraging and roosting habitat (Knopf and Rupert 1995, Wunder and Knopf 2003). Given a high over-wintering survival rate in the San Joaquin Valley and Carrizo Plain and the ability of the plovers to use croplands successfully, Knopf and Rupert (1995) concluded that a loss of a major proportion of native habitats in the wintering range has not limited plover populations.

Mountain plovers have been reported in winter in other States in the United States and Mexico, but in comparison to California their numbers are few, and the threat of habitat destruction, modification, or curtailment is unknown with one exception. In the 1990s, the Ejido San Pedro CBC was initiated on a black-tailed prairie dog complex in northwestern Chihuahua, Mexico (birdsource.org 1992–2002). Mountain plovers have been reported in low numbers in most years, with no birds reported in some years (birdsource.org 1993–2002). Vegetation has been modified by livestock grazing to include woody shrubs, and prairie dog densities are low, which allows for increased vegetation height.

In conclusion, after reviewing the current and anticipated impacts to wintering habitat, we find that they do not pose significant threats to the mountain plover.

Effects of Range Management on Mountain Plover Habitat

Domestic livestock grazing is pervasive throughout the breeding range of the mountain plover. Currently accepted domestic livestock grazing management emphasizes a uniform grass cover to minimize grassland and soil disturbance, whereas the landscape created historically by native herbivores was a mosaic of grasses, forbs, and bare ground that changed frequently in time and location (Knopf 1996a, Knopf and Rupert 1999b). The shift to livestock grazing strategies that favor uniform cover is believed to be partly responsible for the decline of mountain plovers in the peripheral breeding areas of Oklahoma and Canada (Flowers 1985, Wershler 1989), but has only been assessed in limited, localized instances elsewhere within the major portion of the breeding range. Mountain plovers are no longer reported from the Lewis Ranch in central Montana since elimination of grazing there in 1993 (Knowles and Knowles 2001). The decline of mountain plovers on the Pawnee National Grassland in Colorado is due to multiple years of wet spring weather, persistent grazing systems, the apparent difficulty of adjusting domestic livestock stocking rates to accommodate years of increased forage, the lack of infrastructure to modify grazing systems, and the sparse application of grassland burning and mineral block placement to restore nesting habitat (Forest Service 1994; S. Currey, Forest Service, in litt. 2002; F. Knopf. in litt. 2002; R. George, in litt. 2002; E. Humphrey, Forest Service, in litt. 2003). These examples are localized and do not appear to exemplify practices in a substantial portion of the breeding range. If the impacts were significant, we would anticipate being able to detect a declining trend in

abundance on the BBS, which shows a statistically significant decline from 1966 to 2002 only in the extreme southern portion of the breeding range where plover abundance is low and the number of routes detecting the species are few (BBS, *http://www.mbr-pwrc.usgs.gov/bbs/bbs.html*).

Several range management practices conducted throughout the range of the mountain plover enhance the development of taller vegetation, thereby eliminating nesting opportunities (Graul and Webster 1976, Knowles and Knowles 1993). Examples of these practices include "pitting" to increase moisture retention in the soil, introduction of exotic grass species such as crested wheatgrass, watershed improvement projects to retain water, and, in Montana, fire suppression (Graul 1980, FaunaWest 1991, Knowles and Knowles 1993).

Localized range management activities on private and public lands also destroy mountain plover habitat. In 2001, for example, two known mountain plover breeding sites were destroyed in Valley County, Montana, by the construction of stock tanks in an area designated by the BLM as an Area of Critical Environmental Concern for mountain plover (C. Knowles, in litt. 2001).

Although range management activities may adversely affect some habitat for the mountain plover in specific instances, the complete absence of grazing causes mountain plover habitat to deteriorate. Therefore, we see grazing as necessary for the species, and not a threat to the species throughout its range.

Effects of the Decline of Burrowing Mammals on Mountain Plover Habitat

The historic decline in abundance and distribution of prairie dogs likely contributed to the historic decline of the mountain plover (Knowles *et al.* 1982; S. Fitton, in litt. 1992; Knopf 1994). The mountain plover nests on active prairie dog colonies, principally those of the black-tailed prairie dog (*Cynomys ludovicianus*), throughout its breeding range, as prairie dogs maintain their preferred nesting habitat of low vegetation structure and a high percent of bare ground. Preliminary findings from Colorado suggest that mountain plover nesting success is higher on black-tailed prairie dog colonies than sites without prairie dogs (V. Dreitz and F. Knopf, in litt. 2002). Prairie dogs were widespread and numerous throughout the mountain plover's historic breeding range (Service 2002). Mountain plovers presently occupy prairie dog colonies in Colorado, Montana, Wyoming, Oklahoma, and New Mexico (Shackford 1991; Godbey 1992; Nelson 1993; Hawks Aloft 2001b; M. Edwards, in litt. 1994; T. Thompson, in litt. 2003; Dinsmore 2001). Montana, Wyoming, and Colorado likely comprised most of the core mountain plover breeding areas historically, and currently there are more mountain plovers associated with prairie dogs in those States. The suitability of prairie dog colonies as mountain plover habitat appears to be influenced by the individual colony size and prairie dog density (Knowles *et al.* 1982, Olson-Edge and Edge 1987, Dinsmore 2001). Therefore, total prairie dog acres is not a measure of total suitable mountain plover habitat available.

Black-tailed prairie dogs have been reported to currently occupy about 256,000 ha (631,000 ac) in Colorado (Pusateri, CDOW, in litt. 2002), 36,000 ha (90,000 ac) in Montana, and an estimated 50,000 ha (125,000 ac) in Wyoming (Luce 2003). In Phillips County, Montana, 99 percent of the mountain plover nests found on survey transects were located on active prairie dog colonies (Dinsmore 2001). The largest population of mountain plovers in Montana (about 700 individuals) occurs on black-tailed prairie dog colonies in Phillips County, and mountain plover and prairie dog abundance are closely related there (Dinsmore 2001). Mountain plovers seem closely tied to active prairie dog colonies in Wyoming in the Powder River Basin, including Thunder Basin, particularly the Thunder Basin National Grassland. Mountain plovers are associated with black-tailed prairie dog colonies on the Pawnee National Grassland in northern Colorado (Nelson 1993; F. Knopf, in litt. 1999), in the Arkansas River Valley, and on the Comanche National Grassland in southeastern Colorado (K. Geisen, CDOW, in litt 2001). A large population of mountain plovers nest in montane grasslands without prairie dogs in South Park in central Colorado (Wunder *et al.* in prep.). About 50 percent of the black-tailed prairie dog colonies in Colorado occur in nine southeastern counties, which also report numerous mountain plover sightings (Kingery 1998; L. Nelson, CDOW, in litt. 2002).

Mountain plovers sometimes nest on white-tailed prairie dog colonies in Colorado, Wyoming, and Montana (P. Deibert, pers. comm. 2003). Gunnison's prairie dogs occur at the periphery of the mountain plover breeding range in northern New Mexico and southern Colorado, and mountain plovers have been documented to nest on their colonies (5 out of 19 confirmed breeding sites on BLM lands in Taos County were on Gunnison prairie dog colonies (Hawks Aloft 2001b)). The geographic extent of mountain plover use of Gunnison colonies appears to be small, and limited information suggests no close dependence.

Because mountain plovers have no ability to modify their environment to create suitable nesting conditions, the decline of prairie dogs can result in the loss of suitable nesting characteristics in only a few weeks (Dinsmore 2001).

Outbreaks of sylvatic plague occur frequently throughout Montana, Wyoming, and Colorado on prairie dog colonies in the breeding range of the mountain plover. Sylvatic plague is an exotic disease to which prairie dogs have almost no immunity, although recent laboratory research indicates some isolated resistance to plague in black-tailed prairie dogs (Rocke, USGS, pers. comm. 2002). However, recently available population data across a majority of the species' range, that include many smaller populations (which represents the majority of all occupied habitat), indicate that occupied prairie dog habitat is more abundant and more stable than previously thought. The majority of black-tailed prairie dog populations occur in small, isolated complexes where the dynamics of disease appear to be fundamentally different than in larger populations. The reproductive and dispersal capabilities of the species, as indicated by the distribution, abundance, and trends data for the species, may be sufficient to counteract, at least partially, the impacts of a disease that occurs only sporadically in time and space (Service 2002).

Prairie dog control, principally by poisoning, continues to occur on private and public lands throughout the mountain plover's breeding range, although the likelihood of control on public lands is minimized by Federal agency policies (Service 2002). Black-tailed prairie dog populations are capable of recovering rapidly from chemical control efforts that temporarily reduce their numbers (or from other depressant factors such as disease (Knowles 1986) or drought (Hoogland 1995)).

Mountain plovers may vacate prairie dog colonies following plague or poisoning because of the rapid deterioration of habitat conditions (Dinsmore 2001), but we consider plague or prairie dog control to be a temporary impact on mountain plovers. For example, between 1992 and 1996, prairie dog occupation of colonies in Montana's area of greatest prairie dog abundance was reduced by as much as

80 percent as a result of sylvatic plague (J. Grensten, pers. comm. 1998). Mountain plover numbers along prairie dog transects in these colonies declined from 80 in 1991 to 7 in 1999, but have slowly increased since 1996 as prairie dog abundance has increased (S. Dinsmore, in litt. 2000a).

Prairie dog shooting is popular throughout the breeding range of the mountain plover, and intense, persistent shooting of black-tailed prairie dogs has been shown to reduce prairie dog abundance, and perhaps prevent or retard recovery of colonies low in abundance due to sylvatic plague or poisoning (Vosburgh and Irby 1998; Knowles and Vosburgh 2001; L. Hanebury, pers. comm. 2003). We believe prairie dog shooting will continue to occur in areas occupied by mountain plovers. While it has the potential to degrade or prevent recovery of habitat and impact mountain plover breeding success, we believe those instances are localized and infrequent.

New information made available this year from many State and Federal agencies indicates the quantity of occupied black-tailed prairie dog habitat has increased in the last several decades (Luce 2003). Given the above summary of prairie dog habitat abundance, distribution, and threats and the subsequent impact on the mountain plover, we believe modification of prairie dog habitat is not a substantial threat to the mountain plover.

Oil, Gas, and Mineral Development in Mountain Plover Breeding Habitat

The development of oil, gas, coalbed methane, and other mineral resources commonly occurs throughout the breeding range of the mountain plover. Expedited oil and gas development is a national priority, and a new interagency task force has been assembled to assist Federal agencies in their efforts to expedite review and completion of energy-related projects on Federal lands (Executive Order 13212). However, we were able to find little documentation that this mineral resource development poses a current or future threat to mountain plovers.

Numerous current BLM planning documents detail the number of wells, roads, and other facilities required to accommodate development of these mineral resources. A summary of these planning documents for Wyoming shows at least 10 authorized or proposed active natural gas and coalbed methane projects in known or potential mountain plover nesting habitat (*e.g.*, Continental Divide/Wamsutter II Natural Gas Project, Seminoe Road Coal Bed Methane (CBM); Powder River Basin CBM) (P. Deibert, Service, in litt. 2003). Full build-out of these projects would result in over 50,000 individual wells, impacting up to 63,000 ha (155,000 ac), and creating nearly 32,000 km (20,000 mi) of new roads and 37,000 km (23,000 mi) of new pipelines (P. Deibert, in litt. 2002). Of these statistics, development of the Powder River Basin CBM alone will include nearly 40,000 wells and 27,000 km (17,000 mi) of new roads, affecting about 48,000 ha (118,000 ac) of lands (P. Deibert, Service, in litt. 2003). The Powder River Basin CBM project covers much of the black-tailed prairie dog habitat in Wyoming (K. Henke, pers. comm. 2003). In addition, there are about 14,000 coalbed methane wells proposed for the Powder River Basin in Montana (P. Deibert, in litt. 2003). Numerous other projects (*e.g.*, Bighorn Basin bentonite mine, Carbon Basin coal) are proposed or ongoing in Wyoming in areas occupied by mountain plovers (P. Deibert, in litt. 2003). In Wyoming, over 12,000 coalbed methane wells were drilled by 2001, and the current development schedule established will result in nearly 40,000 additional wells by 2011.

Another example of increased energy development is Phase I of the SeaWest Wind Power Project in Wyoming. This wind farm is now operational and has disturbed 30 ha (70 ac) on the Foote Creek Rim Mesa, but final build-out calls for 667 to 1,000 wind turbines, that would permanently occupy 208 ha (515 ac) when complete.

The development of oil, gas, and other energy resources requires construction of individual project pads, access roads, travel corridors, pipelines, power lines, and other facilities (Brockway 1992). The degree of impact on mountain plovers from these activities depends on project size, density, frequency of maintenance and operation, and proximity to mountain plovers. However, the actual impact of this development on mountain plovers is unknown.

Energy development has the potential to modify specific nesting, brood rearing, and foraging habitat characteristics, such as vegetation height, proportion of bare ground, prey density, and predator regimes (S. Dinsmore, Mississippi State University, in litt. 2003). Mountain plovers nest on nearly level ground and often near roads, adults and chicks often feed on or near roads, and roads may be used as travel corridors by mountain plovers, all of which make plovers susceptible to being killed by vehicles (McCafferty 1930, Laun 1957, Godbey 1992, Knowles and Knowles 2001), although we have no evidence that this has had an impact on mountain plover population levels.

Energy development also results in soil disturbance, and because the mountain plover has been described as a "disturbed prairie" species (Knopf and Miller 1994), this disturbance could be inferred as benign or even beneficial to the species. The BLM has standards for revegetation of disturbed sites, and for control of invasive weed species along roads, well pads, and other disturbed sites. In the Powder River Basin of Wyoming, anticipated problems with invasive species induced by coalbed methane mining have not materialized to any significant extent (J. Carroll, pers comm. 2003).

About 150 ha (370 ac) of mountain plover habitat at the Antelope Coal Mine in Converse County, Wyoming, have been affected by mining disturbance since 1982 (P. Deibert, pers. comm. 1999b). Mountain plover inventories conducted from 1982 to 2001 have documented the presence of mountain plovers and broods within and contiguous to the mine permit area. Although the number of broods on the mine permit area has declined since 1993, broods are still reported adjacent to the mine permit area (Thunderbird Wildlife Consulting, Inc. 2003). In Montana, a mountain plover nesting area near the Pryor Mountains in Carbon County was recently lost to bentonite mining (C. Knowles pers. comm. 2003). As many as 51 mountain plovers likely occurred on the Foote Creek Rim wind power project in Carbon County in southeastern Wyoming in 1994. The population there has now declined to about 26 (Johnson *et al.* 2000, Young and Erickson 2003). While we do not believe that mineral resource and wind farm development can be considered beneficial to mountain plovers, their combined impacts do not appear to pose a major threat.

Our consideration of energy development as a listing factor in the proposed rules contributing to the potential decline of the mountain plover was based on the magnitude of anticipated development, as well as on information that existing projects have resulted, or are likely to result, in the modification of habitat required by nesting mountain plovers, and on enhanced opportunities for avian and terrestrial predators. However, because coalbed methane development, although widespread, has not been demonstrated to be detrimental to mountain plovers and because other types of energy development are more limited, we believe the current and anticipated mineral resource development in the

breeding range of the mountain plover is not a major threat to their continued existence.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Prior to the passage of the Migratory Bird Treaty Act in 1918, mountain plovers were commercially hunted for food. However, this no longer occurs. Mountain plovers reside on some prairie dog colonies where recreational prairie dog shooting occurs. Although a few mountain plover mortalities have been attributed to shooting, this loss is not thought to be significant. There is no recent evidence that overutilization is a current threat.

Factor C. Disease or Predation

Disease-related factors are not known to be a direct threat to the species. However, plovers that breed on prairie dog colonies are indirectly affected through a modification of habitat when an epidemic of sylvatic plague reduces numbers of prairie dogs in a colony (*see* discussion under Factor A).

Mountain plovers eggs and chicks are the most vulnerable life stages to terrestrial and avian predation. Potential avian and terrestrial predators include the prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), ravens (*Corvus corax*), swift fox (*Vulpes velox*), red fox, ground squirrels (*Spermophilus spp.*), and coyote (*Canis latrans*) (Graul 1975). Predation influences the productivity of all ground-nesting birds, and nesting success of less than 50 percent is not unusual. Predation on plover nests on the Pawnee National Grassland has ranged between 15 and 74 percent from 1969 to 1994 (Graul 1975, Miller and Knopf 1993, Knopf and Rupert 1996). A high rate of nest predation by swift fox at the Pawnee National Grassland in 1993 and 1994 may have been due to temporarily reduced alternate prey resources (Knopf and Rupert 1996).

From 1994 to 2003, grasslands on the Pawnee National Grassland have been burned each year to enhance mountain plover nesting habitat (E. Humphrey, in litt. 2003). All eight nests monitored on the burn sites in 1996 were destroyed by swift fox (F. Knopf, in litt. 1996). Increased predation following burning, as indicated on the Pawnee National Grasslands, may affect nesting success locally in some years, but is not a persistent factor throughout the species' range. Nest predation also occurs in Phillips County, Montana, but is probably not a significant influence on nesting success at this location (Dinsmore 2001).

On December 17, 2002, we completed conferencing under the Act with the BLM for proposals to develop oil and gas resources in the Powder River Basin (M. Long, Service, in litt. 2003). We concluded that predation by mammalian and avian predators would increase with the development as proposed, and we recommended conservation measures to minimize adverse effects. Predation on the small number of nests in the Powder River Basin will not have an impact on the species rangewide.

There is no evidence to indicate at this time that mountain plovers are affected by West Nile virus (Knopf pers. comm.).

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Protecting the mountain plover and its habitat is complicated by its wide geographic range, which includes private and public land, and numerous State, Federal, and Tribal Land authorities.

Federal Regulations

One regulatory mechanism that currently protects the mountain plover is the Migratory Bird Treaty Act (MBTA), which prohibits direct mortality or the destruction of active nests. Other Federal laws that currently provide for conservation of mountain plovers include the Federal Land Policy and Management Act of 1976; National Forest Management Act of 1976; Federal Onshore Oil and Gas Leasing Reform Act; Federal Insecticide, Fungicide, and Rodenticide Act; and Federal Agriculture Improvement and Reform Act. Some Federal agencies such as the BLM or the Forest Service also have adopted policies to require that their actions not contribute to the declining status of a species.

While Federal land ownership is not a guarantee of species conservation. Federal jurisdiction over surface resources can make application of conservation practices easier to implement. The BLM administers 13 percent of the mountain plover habitat (13,000 ha (27,000 ac)) in South Park, Park County, Colorado, where 20 percent or more of the entire mountain plover breeding population is estimated to occur. The BLM recently produced a conservation assessment to help guide implementation of future conservation measures for the mountain plover, including land exchange and consolidation (Granau and Wunder 2001). In that assessment, the Reinecker Ridge State Wildlife Area in the central part of the county was identified as having excellent mountain plover breeding habitat and good conservation potential. It is already under public ownership, primarily through the BLM and Colorado State Land Board (Granau and Wunder 2001).

The National Forest Management Act requires the Forest Service to manage habitats for native species. The Service has coordinated with the Forest Service for over a decade regarding the conservation needs of the mountain plover on the Pawnee National Grassland in Colorado. Mountain plovers are now nearly extirpated from this historic stronghold due to climatic events and changes in grazing management, and restoration of habitat has not been immediately forthcoming. Recently, the Forest Service initiated efforts to improve nesting habitat conditions on the Pawnee (Bedwell, in litt. 2003), although some recovery plans and recovery objectives will not be fully realized for several years (S. Currey, in litt. 2002).

The Forest Service has closed the shooting season for black-tailed prairie dogs on the Thunder Basin National Grassland in Wyoming. While the reason for the closure was recovery of the endangered black-footed ferret, the mountain plover stands to gain habitat as prairie dogs there recover from an epizootic of sylvatic plague.

Two small National Wildlife Refuges (Kern and Pixley) in The San Joaquin Valley and Carrizo Plain provide some natural and cropland habitat for wintering mountain plovers (J. Engler, in litt. 1992, 2003; Knopf and Rupert 1995), although they are not managed specifically for mountain plovers and some of the former potentially suitable grassland and shrubland on Kern National Wildlife Refuge has been overwhelmed with exotic grasses and saltcedar (J. Engler, in litt. 2003). The BLM, California Department of Fish and Game, and The Nature Conservancy have developed a management plan for the Carrizo Plain Natural Area that calls for grazing a 1,850-ha (4,640-ac) BLM allotment by sheep in a manner that would encourage use by mountain plover (BLM *et al.* 1995). Prescribed burning also is called for in the plan and has been demonstrated to encourage use by mountain plovers (Knopf and Rupert 1995).

International Mechanisms

The mountain plover is designated as a threatened species by Mexico (S. Jewell, Service, in litt. 2000) a designation that has begun to provide some awareness of the need for the species' conservation. Mexico currently has no regulations to protect the habitat of the mountain plover. The species also

was designated as endangered by Canada in 1987, a status that was confirmed in 2000 (Committee on the Status of Endangered Wildlife in Canada 2000).

A Memorandum of Understanding between Canada, Mexico, and the United States was established to enhance coordination and partnerships regarding conservation of wildlife, plants, biological diversity, and ecosystems of mutual interest. The Memorandum of Understanding established the Trilateral Committee for Wildlife and Ecosystem Conservation and Management to develop and implement cooperative conservation projects within the three countries. This Committee has evaluated opportunities for shared conservation efforts on many species, including the mountain plover.

State Regulations

The mountain plover is now classified as threatened in Nebraska, a "species of special interest or concern" in California, Montana, and Oklahoma, a "species in need of conservation" in Kansas, and a "high priority species of concern" in New Mexico (Flath 1984; Sager 1996; E. Hunt, California Department of Fish and Game, in litt. 1990; Nebraska Game and Parks Commission 1992; Oklahoma Department of Wildlife Conservation 1992; Kansas Department of Wildlife and Parks 1992). States other than those identified above have not given the mountain plover any special designation. State listing can encourage State agencies to use existing authorities to conserve species and habitats, stimulate research, and allow redirection of priorities within State natural resource departments.

State agencies within the range of the mountain plover have recently completed "A Multi-State Conservation Strategy for the Black-tailed Prairie Dog in the U.S." (Luce 2003) to pursue conservation of the black-tailed prairie dog through regulations or provision of incentives to landowners for maintaining prairie dog colonies. The sale of rodenticide within the mountain plover's breeding range has increased in recent years and prairie dog shooting also is popular throughout the range of the mountain plover. No State regulations limit prairie dog poisoning, but prairie dog shooting is regulated in some areas. Colorado has banned prairie dog sport shooting on all public lands and under most circumstances on private lands; Montana has adopted a seasonal closure of prairie dog shooting on public lands, and there are no restrictions on shooting prairie dogs in Wyoming, except on the Thunder Basin National Grassland where shooting is banned.

The State of Colorado, in which a majority of the species' breeding range occurs, has initiated a program to conserve the mountain plover and its habitat, by reducing their vulnerability while they occupy cultivated lands, educating the public, and conserving grasslands that are known or potential breeding habitat (T. Blickensderfer, Colorado Department of Natural Resources, in litt. 2003). In 2003, the CDOW spent $263,000 to conduct research and monitoring on public and private lands occupied by mountain plovers, create an educational video, and implement a "1–877–4PLOVER" number to help reduce the "take" of mountain plovers on cultivated lands in Colorado and contiguous States. The CDOW also has created the Colorado Species Conservation Partnership program. The purpose of the program is to implement conservation actions on private and public lands throughout Colorado to ensure that the status of declining and at-risk species is improved to a level that will prevent their listing under the Act. The CDOW is pursuing mountain plover conservation under this program by recommending that $2 million be dedicated to long-term conservation agreements on private lands that may be occupied by mountain plovers. The initial sign-up for this effort resulted in applications for conservation easements for over 60,704 ha (150,000 ac) of private shortgrass prairie in eastern Colorado that would cost $14,600,000. The CDOW is pursuing partnerships to implement these conservation easements, and is optimistic that more funding will be provided in future years (R. George, in litt. 2003).

The Nebraska Game and Parks Commission working with the Rocky Mountain Bird Observatory has initiated a similar landowner incentive program called the Shortgrass Prairie Partnership (Holliday 2003) and funded in 2003 for over $500,000. It is in the first stages of implementation. While both the Colorado and Nebraska programs are voluntary habitat conservation programs, both wildlife agencies have the authority to initiate, fund, and implement them. These conservation efforts are new but have shown some initial successes and are likely to provide a significant level of protection for the mountain plover, especially in eastern Colorado.

In California, the species is listed as a species of special concern. In the following discussion, we describe the regulatory mechanisms in California on a county-level basis.

Three counties in California are drafting Habitat Conservation Plans (HCPs) with the Service to protect listed and declining species, including the mountain plover. With the development of the Western Riverside County Multiple Species HCP (MSHCP), the County of Riverside and other jurisdictions within Riverside County and California have requested an incidental take permit under section 10(a)(1)(B) under the Act for up to 164 covered species, including the mountain plover. The permit is needed to authorize take of listed species during urban and rural development, and agricultural activities in the approximately 509,904-ha (1.26 million-ac) study area in western Riverside County. The county and other jurisdictions propose in their conservation strategy to conserve, monitor, and manage 85 percent of the potential plover wintering habitat (*i.e.*, 2,715 of 3,185 ha (6,710 of 7,870 ac)) in the county. The Service is now assessing the effect of the MSHCP and the associated incidental take permit on the mountain plover and other species proposed for coverage.

Similarly, a San Joaquin County HCP finalized in November 2000 targets the protection of over 40,469 ha (100,000 ac) of habitat for 92 species, including the mountain plover, following adoption of enabling ordinances and/or resolutions by local agencies. A similar HCP for Solano County, which includes protection of potential mountain plover habitat, is being drafted, but is not yet finalized.

In summary, Federal, State, and county agencies and governments have taken significant proactive steps, in the absence of listing, and have shown progress in the conservation of mountain plovers and their habitat.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

Because mountain plovers congregate in large flocks on the wintering grounds, they may be more vulnerable to local catastrophic events there. For example, winter surveys in the Imperial Valley in February 2003 were cut short when heavy rains fell and the flocks of mountain plovers disappeared. It is speculated that the birds left their wintering grounds early or moved to less suitable habitats in the Central Valley (F. Knopf, in litt., 2003). The former appears more likely since the CBC for the area (Salton Sea South) had a record low number of plovers, while the Panoche Valley count to the north

had far greater numbers than usual (birdsource.org 2003).

Pesticide Application and Exposure

Grasshoppers occur throughout the breeding range of the mountain plover and can reach population levels considered a threat to agriculture. The APHIS (2002) has authorized rangeland grasshopper and Mormon cricket control in areas occupied by mountain plovers. Dimilin, malathion, and carbaryl are the identified chemicals when grasshoppers reach economic thresholds (APHIS 2002). Control on private lands can be undertaken by State agencies or private landowners without participation or oversight by APHIS.

The emphasis of the rangeland grasshopper control program is to reduce rather than eliminate grasshoppers, but effects to nontarget insects also occur. The effects of treatment are immediate, and some treatments can depress insect populations into the second year (APHIS 2003). Grasshoppers and other insects are major prey items of mountain plovers, and control may influence mountain plover productivity (Graul 1973, Knopf 1996b, Knopf and Rupert 1996). In conferring under section 7 of the Act on the effects of treatments on mountain plover, we concluded that the application of rangeland grasshopper control as described by APHIS (2002) on mountain plover breeding habitat could result in reduced prey, greater foraging distances, increased chick predation, and reduced survival (W. Knapp, Service, in litt. 2002; R. Williams, Service, in litt. 2003).

In Montana, grasshopper control is authorized to occur in 2003 on both public and private lands (APHIS 2003). Because APHIS, in conference with the Service, has agreed to treatments that will avoid active black-tailed prairie dog colonies and because mountain plovers in Montana are closely associated with black-tailed prairie dog colonies, we believe that treatments are not likely to threaten the plover there. Similarly, in Wyoming, planning is underway to authorize grasshopper control on BLM lands throughout Wyoming. After conferring with the Service, APHIS has agreed to avoid prairie dog colonies and to avoid known mountain plover nesting sites not associated with prairie dog colonies (K. Dickerson, Service, pers. comm. 2003). Control on private lands can be undertaken by State agencies or private landowners without participation or oversight by APHIS or the Service. While control of grasshoppers and other pests on private lands may pose a threat, we do not believe that it is of a magnitude or immediacy that warrants listing the species.

Mountain plovers may be exposed to pesticides while they occupy winter habitat in California (Knopf 1996). In conferring under section 7 of the Act, we concluded that malathion application to control curly-top virus in the Imperial and San Joaquin Valleys would harass some wintering mountain plovers, but the timing and location of treatment was not likely to result in direct exposure, or significant impacts to mountain plover prey (W. White, Service, in litt. 2001b). More recently, the California Department of Fish and Game conducted an assessment of exposure risk in Imperial County, specifically, by comparing mountain plover presence in the Valley with crop types predominately used by them, and the pesticides typically applied to these crops (B. Hosea, California Department of Fish and Game, in litt. 2003; Wunder and Knopf 2003). This information suggests that direct exposure to mountain plovers is reduced because application of pesticides occurs when plovers are not using the fields. For example, insecticides are usually applied to alfalfa fields when the alfalfa is too high to be attractive to mountain plovers. Also, insecticides are not applied while livestock are grazing fields to minimize pesticide exposure to livestock, and pre-planting herbicides are usually incorporated into the soil as a granular form, thus reducing exposure risk. Potential impacts to the mountain plover prey base on the wintering grounds are not known, but also appear to be minimal for reasons cited above (B. Hosea, in litt. 2003). Pesticide exposure by aerial drift is likely due to mosaic cropping patterns, but effects to mountain plovers are unknown.

A review of exposure to organochlorines, selenium, and heavy metals showed that concentrations in mountain plovers were below thresholds that cause population-level effects (A. Archuleta, Service, in litt. 1997). More recently, the Service analyzed pesticide levels in 20 mountain plover eggs collected from Colorado and 4 from Montana. Dichlorodiphenyldichloroethylene (DDE) levels were detected in all eggs; in four eggs levels were above those known to be detrimental to other bird species (K. Dickerson, Service, in litt. 2002). While the levels detected in the mountain plover eggs may have been influenced by prolonged storage prior to analysis, the results nonetheless suggest that mountain plovers may be at risk from organochlorine pesticide exposure (K. Dickerson, Service, pers. comm. 2003). The DDE is a metabolite of dichlorodiphenyltrichloroethane (DDT), known to be responsible for eggshell thinning, and is extremely persistent in the environment. In addition, a recent investigation found a wide disparity in cholinesterase levels between mountain plovers collected in the Central Valley (pesticide use widespread) compared to those from the Carrizo Plain (pesticide use minimal), but no differences in mountain plover body condition (Iko, *et al.* 2003).

Status Summary

The species was proposed in 1999 and 2002 as threatened because the best information available at that time indicated breeding population declines and loss of habitat due to a variety of factors, including agricultural practices, prairie dog declines, and grassland conversion. Research on some of these issues, reanalysis of old data, and new information obtained in the last year lead us to conclude that the threats to the species are such that listing is not warranted.

There is no information to document that the mountain plover population is declining or will be in danger of extinction in the foreseeable future. The declines apparent in the BBS data turned out to be statistically insignificant. The CBC data in California are tremendously variable, but suggest a slow downward trend, whereas surveys on the wintering grounds by researchers do not demonstrate declines. Although there are many specific instances of grassland conversion destroying plover nesting habitat, nesting habitat does not appear to be limiting. Occupied prairie dog habitat is more abundant and more stable than previously thought, providing breeding and nesting habitat for plovers. Nesting appears to be equally successful on croplands as on native grassland. Distribution of plovers across the wintering range appears to depend more on annual farming practices and weather rather than on permanent habitat destruction.

In the last few years, Federal land management agencies and State and county governments have become more actively involved in mountain plover management. In 1994, the Forest Service developed a "Mountain Plover Management Strategy" for the Pawnee National Grassland in Colorado. We believe formalized conservation efforts by the CDOW will improve the status of the mountain plover in Colorado. Other new conservation efforts within the breeding range include the recently-established Federal, State, and private High Plains Partnership; the Department of Defense's Integrated Natural Resource Management Plan for Fort Carson,

Colorado; the Rocky Mountain Bird Observatory's "Prairie Partners"; The Nature Conservancy's "Prairie Wings"; and private land conservation easement efforts in South Park, Colorado.

Other potential conservation measures for this species include—implementing grazing plans that encourage high grazing intensity in plover nesting areas, revising county bulletins to include specific protective measures for the mountain plover during pesticide application, conducting haying and grazing on existing CRP tracts to manage for the grass height and density required by nesting plovers, providing seeding criteria for new CRP tracts that would encourage establishment of native shortgrass prairie species in preference to taller grasses, and providing incentives to landowners to leave cultivated areas unplanted until plover eggs have hatched and chicks are able to escape from machinery. We have initiated discussions with the NRCS to explore ways, such as through the Conservation Reserve Enhancement Program, that these measures might be implemented on private land.

Following our above analysis and discussion, we have determined that the action of listing the mountain plover as threatened throughout its range as proposed in 1999 and 2002 is not warranted. We have made this determination because the threats to the species, as identified in the previous proposed rules, are not as significant as earlier believed, and current available information does not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range. Consequently, we withdraw our 1999 and 2002 proposed rules and our 2002 proposed special rule for the mountain plover.

References Cited

You may request a complete list of all references cited in this document, as well as others, from the Assistant Field Supervisor at the Grand Junction, Colorado, Field Office (*see* **ADDRESSES**).

Dated: September 3, 2003.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–22860 Filed 9–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 090403B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting/public hearing.

SUMMARY: The original public meeting document was published in the **Federal Register** on August 27, 2003. Due to the U.S. District Court ruling made by Judge Colleen Kollar-Kotelly, on August 31, 2003, the 2002 Biological Opinion, issued on November 15, 2002, is "vacated and remanded to the National Marine Fisheries Service." Further, Judge Kollar-Kotelly ordered that the regulations issued on June 12, 2002, amending the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), are "vacated and remanded to the National Marine Fisheries Service." The Western Pacific Fishery Management Council (Council) meeting document is republished.

DATES: The Western Pacific Fishery Management Council will meet on September 23, 2003, at 12 noon Hawaii Standard Time.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu Hawaii 96813; telephone: 808–522–8220; Call in number: 1–808–527–2929 PIN 5785; FAX: 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The agenda during the Council meeting will include the following items:

1. Pelagic Fisheries

A. Discuss the implications of the ruling of U.S. District Court Judge Colleen Kollar-Kotelly, which puts aside the 2002 Biological Opinion and 2002 regulations.

B. Review and discuss sea-turtle take mitigation measures for the U.S. pelagic longline fishery in the Western Pacific Region. Topics may include continued operation of the fishery, regulations, and/or possible emergency actions.

In 2002, the Council developed a regulatory framework adjustment to the Pelagics FMP which was intended to minimize interactions with, and harm to, Pacific sea turtles. These measures stemmed from the non-discretionary Reasonable and Prudent Alternative contained in a Biological Opinion issued in 2001 by NMFS under the Endangered Species Act. Among the various measures implemented were a prohibition on shallow-set longline fishing north of the equator, and a seasonal area closure from 15° N. lat. to the equator, and from 145° W. long. to 180° long. to all fishing by pelagic longline vessels during April and May of each year. These measures have contributed to reductions in sea turtle interactions. However, the southern area closure exacts a significant economic burden on the Hawaii-based longline fleet because it is unable to access these fishing grounds when bigeye and yellowfin tuna stocks are seasonally abundant during April and May. At its 118th meeting in June 2003, the Council took initial action to consider modifying the southern area closure to reduce the economic impact on the longline fishery while continuing to conserve turtles. The Council also directed its staff to continue preparation of a regulatory amendment for potential changes to the Pelagics FMP, including a detailed analysis of a range of modifications to the southern area closure and the impacts of those alternatives on sea turtles, fisheries, and the environment. At its 119th meeting, the Council will discuss the ruling by U.S. District Court Judge Colleen Kollar-Kotelly, and consider the implications of that ruling for proposed amendments to the Pelagics FMP. The Council will also review and discuss sea-turtle take mitigation measures for the U.S. pelagic longline fishery in the Western Pacific Region. These may include continuation of the fishery, developing regulations, and/or possible emergency actions.

2. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 5, 2003.

John H. Dunnigan,

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

[FR Doc. 03–23004 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

United States Warehouse Act—Official Media for Public Notification

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces an official media system for all public notification of important amendments, notices, actions, issues, and activities regarding the United States Warehouse Act (USWA). This warehouse information will include the suspension or revocation of warehouse licenses, fees, draft and final documents and other pertinent information that is of public interest. This action is being taken to increase the public's awareness of the ongoing activities and functions under the USWA.

Background

The Secretary of Agriculture has the authority to make available public information as deemed appropriate for interested parties. The FSA is designating a single website for this type of information to enhance the public's awareness of the activities and functions of the USWA. The following site has been designated as the USWA's official website where all USWA public information can be found: *http://www.fsa.usda.gov/daco/uswa.htm.*

Also, starting in April 2003, FSA's Kansas City Commodity Office (KCCO) stopped mailing hard copies of public notices and USWA notices to the warehouse trade. To replace the mailing of hard copies, when notices are posted to USWA's official website KCCO will automatically e-mail them to everyone who has enrolled at *http://www.fsa.usda.gov/daco/subscribe.asp.*

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, United States Warehouse Act Program Manager, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–7433 FAX: (202) 690–3123, E–Mail: *Roger_Hinkle@wdc.usda.gov.*

Signed at Washington, DC July 30, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–22858 Filed 9–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction, Land Between the Lakes National Recreation Area, Kentucky and Tennessee

AGENCY: Forest Service, USDA.

ACTION: Notice of transfer of land.

SUMMARY: On October 23, 2002, the Deputy Assistant Secretary of the Army, and on November 20, 2002, the Southern Regional Forester of the USDA Forest Service, signed a joint order transferring administrative jurisdiction of certain lands from the Department of the Army to the USDA Forest Service.

The order transfers from the Department of the Army to the Department of Agriculture 7,518 acres, more or less, by virtue of the authority vested in the Secretary of the Army and Secretary of Agriculture by the Land Between the Lakes Protection Act of 1998 (16 U.S.C. 460*lll*).

A copy of the Joint Order, as signed, and Exhibits A and B, which describe the reserved rights and lands being transferred, are set out at the end of this notice.

DATES: This order will be effective on September 9, 2003.

ADDRESSES: A copy of the order of transfer as signed by the Deputy Assistant Secretary of Army and Southern Regional Forester of the USDA Forest Service, is available for public inspection in the Southern Regional Office of the USDA Forest Service, 1720 Peachtree Road, NW., Atlanta, GA 30309.

FOR FURTHER INFORMATION CONTACT: Michael O. Lange, USDA Forest Service, 1720 Peachtree Road, NW., Atlanta, GA. 30309, (404) 347–2990.

Dated: August 25, 2003.

Robert T. Jacobs,

Regional Forester, Southern Region, USDA Forest Service.

Department of the Army and Department of Agriculture; Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Joint Order Transferring Administrative Jurisdiction of Department of the Army Lands to the United States Forest Service

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by the Land Between the Lakes Protection Act of 1998 (16 U.S.C. 340*lll*) it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army identified in Exhibit A, attached hereto and made a part hereof, are hereby transferred from the Jurisdiction of the Secretary of the Army to the jurisdiction of the Department of Agriculture, subject to outstanding rights or interests of record, and flowage easement rights over the portion of the premises below elevation 378 mean sea level, as set out in Exhibit B. These lands were acquired by the United States in connection with the Barkley Dam and Lake Barkley Project and are within the boundary of the Land Between the Lakes National Recreation Area, Kentucky and Tennessee.

(2) Pursuant to section 512(b) of the aforesaid Land Between the Lakes Protection Act, the Department of the Army lands transferred to the Secretary of Agriculture by this order have the status of land acquired under the Act of March 1, 1911 (commonly called the "Weeks Act") (16 U.S.C. 515 *et seq.*).

This order will be effective as of the date of publication in the **Federal Register**.

Dated: October 23, 2002.

Joseph W. Whitaker,

Deputy Assistant Secretary of the Army, Installations and Housing.

Dated: November 20, 2002.

Robert T. Jacobs,

Regional Forester, Southern Region, USDA Forest Service.

Exhibit A—Legal Description

A tract of land lying along the westerly shore of Lake Barkley, situated in Lyon and Trigg Counties, Kentucky, and in Stewart County, Tennessee, the boundary of which is described as follows:

Beginning at a point located on the 378-foot contour (mean sea level) as it lies along the Westerly shore of Lake Barkley. Said point having KY State Plane Coordinates: N 248,750; E 1,282,136 and identified as Corner 2CN–8 on TVA Map titled "Land Between The Lakes Reservation", drawing number 421B511–6, dated December, 1968. Thence leaving said contour and proceeding N 45°E

(grid bearing) approximately 200 feet to the 359-foot contour;

Thence southerly along said 359-foot contour (msl) as it lies along the Westerly shore of Lake Barkley to a point intersecting the easterly edge of an old road (TN State Plane Coordinates: N 782,160; E 1,445,870), said point being along the westerly bank of Rawls Pond and lying approximately 30 feet east of a Sandstone Bluff;

Thence Southerly along the east edge of said road 0.35 mile to a 6″ diameter Well Casing (TN SPC: N 780,439; E 1,446,413);

Thence 5 feet east to a fence; thence Southerly along and with said fence 820 feet to a drainage ditch;

Thence N 65°37′E 675 feet to a 26″ diameter Red Oak in an existing fence line (TN SPC: N 779,902; E 1,447,025);

Thence Southeasterly along and with said fence approximately 0.6 mile to a point intersecting the South Boundary of Land Between the Lakes (LBL), said point marked by a concrete monument (Corner 10PS–1, TN SPC: N 777,592; E 1,448,808). as shown on TVA Map title "Land Between the Lakes Reservation", drawing number 421B511–1, dated December, 1968;

Thence Westerly along the South Boundary of LBL approximately 30 feet to a point intersecting the 378-foot contour (msl);

Thence along said 378-foot contour (msl) as it meanders in a northerly direction along the westerly shore of Lake Barkley to the Point of Beginning, said tract of land containing 7,518 acres, more or less.

Exhibit B

The right is reserved as may be necessary for the operation of the Barkley Dam and Lake Barkley Project to occasionally overflow, flood, and submerge that portion of the lands described in the attached Exhibit A lying below elevation 378 mean sea level, and to maintain mosquito control in connection with the operation and maintenance of the Barkley Dam and Lake Barkley Project as authorized by the Act of Congress approved 3 September 1954 (Public Law 780, 83rd Congress, 2d Session) and the continuing right to clear and remove any brush, debris, and natural obstruction which, in the opinion of the representative in charge, may be detrimental to the project; provided that no structure for human habitation shall be constructed or maintained on the land, and further provided that no other structure shall be constructed or maintained on the land and no excavation or filling may be performed except as may be approved in writing by said representative of the United States in charge of the project.

[FR Doc. 03–22877 Filed 9–8–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Cooperative Development Grants program.

DATES: Comments on this notice must be received by November 7, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Marc Warman, Program Leader, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 690–1431.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: November 30, 2003.

Type of Request: Intent to extend the clearance for collection of information under RD Instruction 4282–F, Rural Cooperative Development Grants.

Abstract: The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 36 hours per grant application.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 2,675 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of RBS functions, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 7, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–22849 Filed 9–8–03; 8:45 am]
BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for public comments.

SUMMARY: The Department of Commerce is requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations.

DATES: To be assured consideration, initial comments must be received no later than thirty days from the date of publication of this notice. Rebuttal comments must be received no later than forty-five days from the date of publication of this notice.

ADDRESSES: Submit comments to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room

1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Section 201 Duties.

FOR FURTHER INFORMATION CONTACT: Becky Erkul, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1277.

Background

Several parties have advocated that the Department deduct countervailing duties, as well as duties imposed under section 201 of the Trade Act of 1974 (section 201 duties), from export price (EP) and constructed export price (CEP) in calculations of dumping margins pursuant to sections 772(c)(2)(A) and 772(d) of the Tariff Act of 1930, as amended (the Act).

Section 772(c)(2)(A) of the Act requires that the Department deduct from EP and CEP any United States import duties included in the price. This statutory deduction existed prior to the passage of the Uruguay Round Agreements Act (URAA), and the URAA did not modify it in any respect. In addition, section 772(d) of the Act requires the Department to deduct U.S. selling expenses from CEP. Once again, there was a similar statutory deduction for U.S. selling expenses under the pre-URAA antidumping law.

The Department is seeking comments on the appropriate treatment of section 201 duties and countervailing duties under these provisions in antidumping duty calculations.

Comments—Deadline, Format, and Number of Copies

Parties wishing to comment should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. In order to ensure timely and complete distribution of comments, the Department recommends the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on a DOS formatted 3.5″ diskette, Iomega Zip disk, or Compact Disc (CD–R or CD–RW).

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the IA Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address *webmaster_support@ita.doc.gov*.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is warranted, and, if so, will announce a place and time for that hearing.

Dated: September 3, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22946 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Certain Corrosion Resistant Carbon Steel Flat Products From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain corrosion resistant carbon steel flat products (CORE) from Canada in response to a request by petitioners, Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation. This review covers shipments of this merchandise to the United States during the period of August 1, 2001, through July 31, 2002.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. *See Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Elfi Blum-Page, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0190 or (202) 482–0197, respectively.

Background

The Department published the antidumping duty order on CORE from Canada on August 19, 1993 (58 FR 44162). On August 6, 2002, the Department published a notice of opportunity to request administrative review of the antidumping duty order on CORE from Canada (67 FR 50856). On August 30, 2002, the Department received a timely request for an administrative review of the antidumping duty order on CORE from petitioners. On September 25, 2002, we published a notice initiating an administrative review of CORE for Dofasco Inc. (Dofasco) and Stelco Inc. (Stelco). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002).

On February 25, 2003, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from May 3, 2002, until no later than August 31, 2003. Since the 120-day extension falls on a weekend and the next business day is a holiday, the due date is September 2, 2003. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from Canada*, 68 FR 10204 (March 4, 2003).

On July 3, 2003, the Department rescinded the antidumping duty administrative review with respect to Stelco because petitioners withdrew their request for the review and no other party had requested a review of Stelco. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 41302 (July 11, 2003). Therefore, this administrative review only covers Dofasco.

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is certain corrosion-resistant steel, and includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils

(whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant, flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Verification

Although verification in this administrative review was not required under section 351.307(b)(1)(v) of the Department's regulations, the Department conducted verification of certain sales information provided by Dofasco using standard verification procedures, on-site inspection of the manufacturer's facilities, and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the Memorandum to File: Report on the Verification of Dofasco Inc. in the Ninth (01/02) Antidumping Duty Administrative Review for Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, dated August 27, 2003 (*Verification Report*), which are on file in the Central Records Unit, room B–099 of the main Commerce Building.

Analysis

Collapsing of Dofasco and Sorevco, Inc.

For purposes of this review, we have collapsed Dofasco and Sorevco Inc. (Sorevco) and have treated them as a single respondent, as we have done in prior segments of the proceeding. *See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Determination of Sales at Less than Fair Value*, 58 FR 37099 (1993); *see also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 65 FR 9243 (February 24, 2000) (*Canadian Steel 5th*). No new information or evidence of changed circumstances has been obtained in this review to warrant reconsideration of our decision to collapse these two companies.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we considered all products produced by the respondent that are covered by the description in the *Scope of Antidumping Duty Order* section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 25, 2002 antidumping questionnaire.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the EP or the CEP to NV, as described in the Export Price and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Export Price

We used EP when the subject merchandise was sold, directly or indirectly, to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted by facts on the record. Based on evidence on the record, we conclude that the long-term contract sales are made by Dofasco's U.S. affiliate, Dofasco U.S.A. (DUSA), and should be classified as CEP sales.

Dofasco makes certain sales in the United States through DUSA. The sales involving DUSA are either made through long-term contracts or are spot sales. Evidence on the record indicates that, for spot sales, while DUSA is involved, the sales are made by Dofasco. We are treating these sales as EP sales. However, based on evidence on the record, we conclude that the long-term contract sales made by DUSA should be classified as CEP sales. *See* Memorandum to File: Analysis of Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the Preliminary Results of the Ninth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Canada, dated September 2, 2003. (*Dofasco Analysis Memo*).

The Department calculated EP and CEP for Dofasco based on packed prices to customers in the United States. We made deductions from the starting price, net of discounts and rebates, for movement expenses (foreign and U.S. movement, U.S. Customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In addition, for CEP sales, in accordance with sections 772(d)(1) and (2) of the Act, we deducted from the starting price credit expenses, indirect selling expenses, including inventory carrying costs, commissions, royalties, and warranty expenses incurred in the United States and Canada associated with economic activities in the United States. As in prior reviews, certain Dofasco sales have undergone minor further processing in the United States as a condition of sale to the customer. The Department has deducted the price charged to Dofasco by the unaffiliated contractor for this minor further processing from gross unit price to determine U.S. price. *See Canadian Steel 5th Review.*

As provided in section 351.401(i) of the Department's regulations, we determined the date of sale based on the date on which the exporter or producer

established the material terms of sale. Dofasco reported that, except for long-term contracts and sales of secondary products, the date on which all material terms of sale are established is the final order acknowledgment date. Therefore, we used this reported date as the date of sale. For Dofasco's sales made pursuant to long-term contracts, we used date of the contract as date of sale. We used shipment date as the date of sale for sales of secondary products for which there is no order acknowledgment.

Normal Value

The Department determines the viability of the home market and the comparison market by comparing the aggregate quantity of home market and U.S. sales. We determined that Dofasco's quantity of sales in its home market exceeded five percent of its sales to the United States of CORE. *See* section 351.404(b) of the Department's regulations. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade (LOT) as the EP or CEP.

We used sales to affiliated customers only where we determined such sales were made at arms-length prices (*i.e.*, at prices comparable to the prices at which the respondent sold identical merchandise to unaffiliated customers).

The Department disregarded sales below cost of production (COP) in the last completed review. *See Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not to Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada*, 66 FR 3543 (January 16, 2001) (*Canadian Steel 6th*). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether Dofasco's sales in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we used home market sales and COP information provided by Dofasco in its questionnaire responses.

We made adjustments to COP and CV to reflect appropriately Dofasco's expenses associated with painting services provided by an affiliate. We made further adjustments by using Dofasco's fiscal year 2002 financial statements for general & administrative (G&A) expenses.

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(B) and (c) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

In accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same LOT as the U.S. price. *See* the *Level of Trade* section below.

For those product comparisons for which there were sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be arms-length) or unaffiliated parties, in accordance with section 351.403 of the Department's regulations. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market net of discounts and rebates. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for circumstance-of-sales (COS) differences in accordance with 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. For comparisons to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, warranties, and royalties) and adding U.S. direct selling expenses. For comparison to CEP, we made COS adjustments by deducting home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We offset commissions paid on sales to the United States by the lesser of U.S. commissions or comparison (home) market indirect selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually

from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997); *see also Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy,* 68 FR 47032 (August 7, 2003).

In the current review, Dofasco claimed that sales in both the home market and the United States market were made at three LOTs. As discussed in detail in *Dofasco Analysis Memo,* to evaluate Dofasco's LOT claims, we examined information regarding the distribution systems in both the U.S. and Canadian markets, including the selling functions, classes of customer, and selling expenses for each respondent. As a result of our analysis, we have preliminarily concluded that Dofasco did sell at three different LOTs based on the selling functions performed. *See Dofasco Analysis Memo.* However, the Department did not find that there existed a pattern of consistent price differences between the three levels of trade. Therefore, we did not make LOT adjustments when comparing sales at different LOTs. For a detailed discussion, *see Dofasco Analysis Memo.*

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Time period	Margin (percent)
Dofasco Inc	08/01/01–07/31/02.	0.62

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the BCBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respects to all shipments of CORE from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(c) of the Act: (1) For Dofasco, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 61.88 percent. *See Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 60 FR 49582 (September 26, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to 19 section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22940 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to requests from Dongguan Fay Candle Co. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc. (Palm Beach), Wal-Mart Stores, Inc. (Wal-Mart), Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking), and petitioner, the National Candle Association (NCA). The review covers the period August 1, 2001, through July 31, 2002.

We preliminary determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (Customs) to assess antidumping duties on imports into the United States of subject merchandise exported by the respondents. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Review" section of this notice.)

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–0162 or (202) 482–3148, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 67 FR 50856 (August 6, 2002), and in accordance with section 751(a)(1)(A) of the Act and section 351.213(b) of the Department's regulations, the Department received timely requests to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 108 companies.[1] More specifically, the Department received administrative review requests from Fay Candle, Wal-Mart (who requested a review of three Chinese producers), Qingdao Kingking, and petitioner, the NCA. The NCA requested the Department review 104 alleged Chinese candle producers/exporters. On September 25, 2002, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210 (September 25, 2002) (*Initiation Notice*), initiating on all 108 candle companies for which an administrative review was requested.[2] On November 18, 2002, the Department received a timely withdrawal from Wal-Mart of its request for an administrative review of the three companies for which it had requested a review (*i.e.*, Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company). Pursuant to section 351.213(d)(1) of the Department's regulations, the Department rescinded the review as to Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company. *See Notice of Rescission, in Part, of Antidumping Duty Administrative Review, Petroleum Wax Candles from the People's Republic of China*, 68 FR 40906 (July 9, 2003). Therefore, there were 105 candle companies remaining for which an administrative review was requested.

In accordance with section 777A(c)(2) of the Act, the Department determined that it was not practicable to determine individual weighted-average dumping margins for each exporter/producer for which a review was requested. Therefore, on October 11, 2002, the Department requested information concerning the quantity and value (Q&V) of sales to the United States from all 108 companies. The Department received responses to its request from 17 companies, including the two companies that had requested reviews of their own exports.[3] Based on that information, the Department selected five mandatory respondents to examine in this review. *See Memorandum from Jessica Burdick through Sally C. Gannon to Barbara E. Tillman, Regarding 2001–02 Administrative Review of Petroleum Wax Candles from the People's Republic of China: Respondent Selection* (January 29, 2003) (*Respondent Selection Memo*). The five mandatory respondents chosen were: Fay Candle, Qingdao Kingking, Smartcord Int'l Co. Ltd./Rich Talent Trading (Smartcord), Amstar Business Co., Ltd (Amstar), and Jiangsu Holly Corporation (Jiangsu Holly). *See Respondent Selection Memo*. The Department also determined that it would consider requests for separate rates from those companies that were not selected as mandatory respondents, but who provided Q&V information and also submitted a timely response to the Department's section A questionnaire. *See* the Department's March 26, 2003 letter from Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, Import Administration. Only two companies, Shandong Jiaye General Merchandise Co., Ltd. (Shandong Jiaye) and Shanghai Charming Wax Co., Ltd. (Shanghai Charming), met the criteria and therefore have been considered for a separate rate.

The Department issued complete questionnaires to all five mandatory respondents. On December 18, 2002, the Department received Fay Candle's and Qingdao Kingking's responses to the Department's section A–E questionnaires. On March 24, 2003, the Department received Smartcord's response to the Department's section A questionnaire. Smartcord failed to submit its response to sections B–E of the Department's questionnaire. Amstar and Jiangsu Holly failed to submit responses to any section of the Department's questionnaires.

Due to the complexity of the selection process and of analyzing the numerous questionnaire responses, on March 26, 2003, the Department determined that it was not practicalbe to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days,

[1] Although there were 109 actual requests for review, one company (Qingdao Kingking) individually requested a review and was also listed on the NCA's request for review; therefore, there were only 108 companies for which an administrative review was requested.

[2] Although the *Initiation Notice* lists 109 companies, Qingdao Kingking is listed twice since it made its own request for review hut was also requested to be reviewed by the NCA.

[3] The Department received Q&V information from an additional three parties to whom the Department had sent the Q&V questionnaire on behalf of parties listed in the initiation notice. These three companies stated that they were unrelated to the parties named in the initiation notice.

to September 2, 2003. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 68 FR 14578 (March 26, 2003).

On June 6, 2003, the Department issued supplemental questionnaires to Fay Candle and Qingdao Kingking. On June 20, 2003, the Department issued its second supplemental questionnaire to Qingdao Kingking. On June 24, 2003, the Department issued its second supplemental questionnaire to Fay Candle. Both Fay Candle and Qingdao Kingking requested an extension of time to respond to the Department's supplemental questionnaires, which the Department granted.

On July 9, 2003, the Department received Fay Candle's response to the Department's first supplemental questionnaire. On July 11, 2003, the Department received Fay Candle's response to the Department's second supplemental questionnaire. On July 11, 2003, the Department received Qingdao Kingking's response to the Department's first and second supplemental questionnaires. On July 29, 2003, the Department issued its third supplemental questionnaire to Qingdao Kingking. On July 30, 2003, the Department issued its third supplemental questionnaire to Fay Candle, and the petitioner submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations.

On August 1, 2003, Qingdao Kingking and Fay Candle submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations. On August 4, 2003, Fay Candle requested an extension of time to respond to the Department's third supplemental questionnaire. On August 11, 2003, the Department granted an extension of time to August 13, 2003, to Fay Candle to respond to question 2 of the Department's third supplemental questionnaire, and to August 14, 2003 for the remaining questions. On August 12, 2003, the Department received Qingdao Kingking's response to the Department's third supplemental questionnaire. On August 13, 2003, the Department received Fay Candle's response to question 2 of the third supplemental questionnaire. On August 14, 2004, the the Department received the response to the remaining questions of the third supplemental questionnaire. On August 21, 2003, the Department received comments from petitioner on the relationship between Fay Candle and its U.S. importers. On August 26, 2003, petitioner submitted information concerning what it termed the "involuntary bankruptcy of TIJID, Inc.," for the Department to consider in examining the relationship between TIJID and Fay Candle.[4]

Scope of the Antidumping Duty Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Period of Review

The period of review (POR) is August 1, 2001, through July 31, 2002.

Preliminary Partial Rescission of Administrative Review

On September 25, 2002, the Department published its *Initiation Notice*, initiating on all 108 candle companies for which an administrative review was requested. The Department subsequently requested information concerning the quantity and value of sales to the United States from all these companies. The Department received responses to its request from 17 companies, five of which indicated that they had no sales to the United States of subject merchandise during the POR, citing various reasons, including: They were not a producer, exporter, or importer of candles during the POR; they were an importer of candles and not a producer/exporter; and/or they did not have a relationship with the alleged Chinese candle producer/exporter cited in petitioner's request for review. *See Respondent Selection Memo*. These companies included: Dalian Hanbo Lighting Co., Ltd. (Dalian Hanbo); Premier Candle Co., Ltd. (Premier Candle); Zhong Hang-Scanwell International (ZHS); Zen Continental Co., Inc. (Zen Continental); and Li & Fung Trading Ltd. (Li & Fung).

As part of its standard procedure in administrative reviews, the Department reviewed data on entries under the order during the POR from Customs. Our review of this data revealed that one party, Li & Fung, which claimed it was merely a buying agent for the subject merchandise, may have, in fact, exported the subject merchandise to the United States during the POR. On November 22, 2002, the Department issued a letter to Li & Fung, asking it to clarify whether it had exports of petroleum wax candles during the POR. On February 10, 2003, Li & Fung submitted a letter and attachments to the Department stating that it neither produced, sold, nor exported the subject merchandise during the POR, but that it merely acted as a buying agent. *See Memorandum from Javier Barrientos through Sally Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China: Preliminary Intent to Rescind Antidumping Duty Administrative Review, in Part (POR: August 1, 2001 to July 31, 2002)* (September 2, 2003) (*Intent to Rescind Memo*).

Pursuant to our regulations, the Department may rescind an administrative review if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See* 19 CFR 351.213(d)(3). Because we have found no evidence that there were entries, exports, or sales of the subject merchandise by four of the five companies that reported no shipments during the current POR, in accordance with 19 CFR 351.213(d)(3), the Department is preliminarily determining that this administrative review should be rescinded with respect to Dalian Hanbo, Premier Candle, ZHS, and Zen Continental. The Department therefore intends to issue a final notice of rescission of review with the final results of review, and to send appropriate assessment instructions to Customs.

With respect to Li & Fung, information obtained from Customs does not substantiate Li & Fung's claim that it was merely a buying agent during the POR. *See Intent to Rescind Memo*, a business proprietary discussion on Li & Fung. Therefore, we do not intend to rescind the administrative review with respect to this company.

Application of Adverse Facts Available

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available (AFA) is warranted for the PRC entity, including the following companies: Mandatory respondents

[4] This submission was received too late for the Department to examine it for purposes of the preliminary results.

Smartcord, Amstar, and Jiangsu Holly; Li & Fung; 88 companies that failed to respond to the Department's Q&V letter; and five companies who provided Q&V information to the Department, but did not demonstrate their eligibility for a separate rate.

The latter five companies are: Simon Int'l Ltd.; Taizhou Int'l Trade Corp.; Universal Candle Co., Ltd.; Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou); and Candle World Industrial Co.

Smartcord, Amstar, and Jiangsu Holly, all mandatory respondents, failed to respond to all or part of the Department's questionnaire for this POR. Smartcord responded to section A of the Department's questionnaire, but then failed to submit its response to sections B–E of the Department's questionnaire. Amstar and Jiangsu Holly failed to respond to any section of the Department's initial questionnaire. Li & Fung, who did not provide a Q&V response, reported no shipments, but the Department has been unable to confirm this claim. *See* "Preliminary Partial Rescission of Administrative Review" section above. Another 88 companies failed to respond to the Department's Q&V letter. The five additional companies listed above provided Q&V information but did not demonstrate eligibility for a separate rate. None of these companies qualifies for a separate rate. Therefore, the Department is applying AFA to the PRC entity, of which these companies are a part. The 97 firms (Smartcord, Amstar, Jiangsu Holly, Li & Fung, the 88 who did not respond to the Q&V request, and the five additional companies who did not qualify for a separate rate), named individually in the *Initiation Notice*, who are subject to the PRC-wide rate are listed in Attachment I.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. These 97 companies (listed in Attachment I), for the reasons detailed above, failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because these companies did not respond to the Department's questionnaire, sections 782(d) and (e) of the Act are not applicable. In addition, section 782(c)(1) does not apply because these parties did not indicate that they were unable to submit the information required by the Department. Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department has determined that an adverse inference is warranted pursuant to section 776(b) of the Act.

The Department finds that, by not providing the necessary responses to the A&V letters or questionnaires issued by the Department, these companies have failed to cooperate to the best of their ability. None of these companies cited any reason for their failure to respond. Neither did they indicate that they were having any difficulties in responding to the questionnaires or request assistance or clarification about the questionnaires. Without this information, the Department cannot calculate margins for these companies nor determine that there was merit for a separate rate. This information was in the sole possession of the respondents, and could not be obtained otherwise. Thus, the Department is precluded from calculating margins for these companies or determining eligibility for separate rates. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. Because the 97 companies listed in Attachment I did not demonstrate their eligibility for a separate rate, we have preliminarily determined that they are subject to the PRC-wide rate. In accordance with sections 776(a)(2)(A) and (B), and section 776(b) of the Act, we are applying total AFA to the PRC entity, which includes Smartcord, Amstar, Jiangsu Holly, and the 94 other non-cooperating companies (*see* Attachment I). As AFA, and as the PRC-wide rate, the Department is assigning these companies the rate of 95.74—the highest rate determined in the current or any previous segment of this proceeding. This is the rate calculated in this review for Fay Candle and, thus, as discussed in the "Corroboration of Information Used As Adverse Facts Available" section below, does not need to be corroborated.

Corroboration of Information Used as Adverse Facts Available

Section 776(c) of the Act provides the following when the Department relies on the facts otherwise available:

> When the administering authority or the Commission relies on secondary information *rather than on information obtained in the course of an investigation or review*, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(Emphasis added.)

With respect to Smartcord, Amstar, Jiangsu Holly and the 94 other non-cooperating companies, we are applying the highest calculated rate from the current administrative proceeding as AFA. This rate, the rate calculated for Fay Candle, is also the highest rate from any other segment of this administrative proceeding. Accordingly, we find that it is unnecessary to corroborate the dumping margin calculated for Fay Candle in this administrative review because this rate was based on, and calculated from, information obtained in the course of the administrative review. *See generally* SAA at 870 (stating that information obtained from interested parties during the particular review is an independent course of data used to corroborate secondary information, such as petition information, a determination from a prior review, etc.). *See* also *Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632, 38634 (July 25, 2001) and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 52100, 52103 (Oct. 12, 2001) (unchanged in the final results).

Furthermore, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used to determine Fay Candle's margin in this administrative review will be fully verified and has been subject to the comments of both respondent and petitioner throughout this review. Thus, it is based on the analyzed sales and production data of Fay Candle, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties as well as information

gathered by the a itself. Accordingly, we determine that the Fay Candle's rate is appropriate to be used in this administrative review as AFA in accordance with sections 776(b) and (c) of the Act.

Cooperative Companies That Merit Separate Rates

Two PRC producers/exporters, Shandong, Jiaye and Shanghai charming, responded to the Department's Q&V letter, as well as the Department's Section A questionnaire (which includes eligibility for a separate rate), but were not selected as mandatory respondents. Based on our analysis, these two companies have demonstrated their eligibility for a separate rate (*see* "Separate Rates" section below). Accordingly, for these two companies, we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected as mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

Companies That Claimed No Shipments

With respect to five PRC producers/exporters who responded to the Department's A&V letter claiming that they had no shipments during the POR, the Department is preliminary rescinding this review, in part, with respect to the four producers/exporters for which the Department was able to confirm their claim, as follows: Dalian Hanbo, Premier Candle, ZHS, and Zen Continental (*see* "Preliminary Partial Rescission of Administrative Review" section above). The fifth producer/exporter, Li & Fung, will receive the AFA rate (*see* "Application of Facts Available" section above).

Verification

As provided in section 782(i) of the Act, we intend to verify all company information relied upon in making our final results.

Separate Rates

Fay Candle, Qingdao, Kingking, Shandong Jiaye, and Shanghai Charming have all requested a separate, company-specific rate.[5] It is the Department's policy to assign all exporters of the merchandise subject to review in non-market economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to export activities. To establish whether a company operating in an NME country is sufficiently independent to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors; (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the companies reviewed and those how applied for a separate rate, evidence on the record indicates that Fay Candle's, Qingdao Kingking's, Dhandong Jiaye's, and Shanghai Charming's export activities are not controlled by the government. Fay Candle, Qingdao Kingking, Shandong Jiaye, and Shanghai Charming submitted evidence of their legal right to set prices independently of all government oversight. We find no evidence of *de jure* government control restricting Fay Candle's, Qingdao Kingking's, Shandong Jiaye's or Shanghai Charming's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately-owned companies, such as Shandong Jiaye or Shanghai Charming, and that control over these enterprises rests with the enterprises themselves. Qingdao Kingking, Fay Candle, Shandong Jiaye, and Shanghai Charming submitted the following laws: the Foreign Trade Law of the People's Republic of China, promulgated on May 12, 1994, at the Seventh session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994, the Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations, issued on June 3, 1988, by the State Council of the PRC, the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures, promulgated on April 13, 1998, by Order No. 4 of the President of the People's Republic of China and effective from April 13, 1998. In addition, Qingdao Kingking and Shandong Jiaye submitted the Sino Foreign Equity Joint Venture Law, promulgated on July 1, 1979, by the Fifth National People's Congress. Qingdao Kingking also submitted the Company Law of the People's Republic of China, promulgated on December 29, 1993, at the Fifth Session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994. The legislation placed on the record of this review provides that to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). Therefore, we preliminarily determine that there is an absence of *de jure* government control over export activity with respect to these companies.

De Facto Control

With respect to the absence of *de facto* government control over the export activities of the companies reviewed and those who applied for a separate rate, evidence on the record indicates that the government has no

[5] Although Smartcord, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to the remainder of the Department's questionnaire. As a mandatory respondent, Smartcord was required to provide complete questionnaire responses. Therefore, as detailed in the "Application of Adverse Facts Available" section above, adverse facts available have been assigned to Smartcord. As a result, Smartcord will not receive a separate rate for these preliminary results.

involvement in the determination of export prices, profit distribution, marketing strategy, and contract negotiations of Fay Candles, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's companies. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for these companies. In addition, we found that the Fay Candle's, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's pricing and export strategy decisions are not subject to any governmental review or approval, and that there are no governmental policy directives that affect these decisions.

With regard to Qingdao Kingking, its vice general manager has the right to negotiate prices and enter into contracts on behalf of Qingdao Kingking. There is no evidence that this authority is subject to any level of governmental approval. In addition, there are no restrictions on the use of Qingdao Kingking's export earnings. Qingdao Kingking reported that its general manager is selected by the board of directors, and subordinate management personnel are selected by the general manager. Qingdao Kingking is not required to notify the government about its management selection process.

With regard to Fay Candle, Fay Candle's chief executive officer (CEO) has the authority to enter into contracts on behalf of Fay Candle, and it sets prices pursuant to negotiations with its importers. There is no evidence that this authority is subject to any level of governmental authority. In addition, other than the requirement that hard currency earnings from exports be repatriated through an account in a state bank, there are no restrictions on the use of Fay Candle's export earnings. Fay Candle reported that the entrepreneurial investors who own the company appoint the CEO, and the CEO selects subordinate management personnel. Fay Candle provides identification of company officials to local government authorities for contact purposes only; it is not required to notify the government about its management selection process.

With regard to Shandong Jiaye, its export sales manager has the right to negotiate prices, while the general manager has the authority to enter into contracts on behalf of Shandong Jiaye. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shandong Jiaye's export earnings. Shandong Jiaye reported that its board of directors selects its general manager and the general manager selects subordinate management personnel. Shandong Jiaye provides the name of the general manager to the government for purposes of receiving its business license; however, it is not required to notify the government about its management selection process.

With regard to Shanghai Charming, its general manager has the authority to set the price and to enter into contracts on behalf of Shanghai Charming. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shanghai Charming's export earnings. Shanghai Charming reported that its management is appointed by its parent company, a non-Chinese company. Shanghai Charming is not required to notify the government about its management selection process.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Fay Candle's, Qingdao Kingking's, Shandong Jiaye's, and Shanghai Charming's export activities, we preliminarily determine that these companies have met the requirements for receiving a separate rate for purposes of this review.

Quantity and Value Discrepancy for Qingdao Kingking

The Department has identified a significant discrepancy between the quantity and value data Qingdao Kingking reported with the quantity and value information that the Department identified through Customs data queries. The Department requested an explanation from Qingdao Kingking in its June 6, 2003, supplemental and received Qingdao Kingking's response in its July 11, 2003, submission; however, in this response, Qingdao Kingking did not adequately explain why there could be such a significant discrepancy. The Department also contacted Customs about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Qingdao Kingking and addressing the issue at verification.

Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach

Respondent Fay Candle claimed in the questionnaire responses that it is affiliated with its U.S. importers, TIJID and Palm Beach. In its section A questionnaire response, Fay Candle submitted evidence to the Department concerning its corporate structure, ownership, and relationship to its U.S. importers, TIJID and Palm Beach. The evidence on the record regarding Fay Candle's relationship with TIJID and Palm Beach does not demonstrate that TIJID and Palm Beach were affiliated with Fay Candle under section 771(33) of the Act during the POR. For a full discussion of this issue (which includes business proprietary details), *see Memorandum from Sebastian G. Wright through Sally C. Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Relationship between Dongguan Fay Candle Co., Ltd., and TIJID, Inc. and Palm Beach Home Accents, Inc.* (September 2, 2003) (*Affiliation Memo*). Therefore, the Department preliminarily finds that Fay Candle is not affiliated with TIJID and Palm Beach for purposes of these preliminary results and is basing its fair value comparisons on export price rather than constructed export price. The Department will continue to examine Fay Candle's relationship with its U.S. importers in the context of verification and for the final results of this administrative review.

Date of Sale

Fay Candle and Qingdao Kingking reported various dates as the basis for their dates of sale. Although the Department maintains a presumption that invoice date is the date of sale (19 CFR 351.401(i)), "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*).

With regard to Fay Candle, it reported two distinct dates of sale based on the type of sale. According to Fay Candle, the terms of the sales transactions become fixed at different stages based on the type of sale. After examining the documentation placed on the record by Fay Candle, the Department preliminarily determines that the invoice date is the appropriate date of sale to use for Fay's EP sales in these preliminary results. Because the information regarding Fay Candle's dates of sale is mostly business proprietary, the Department's full analysis of Fay Candle's dates of sale can be found in the *Memorandum from Sebastian Wright through Sally C. Gannon to The File, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Sales Date for Dongguan Fay Candle Co., Ltd.*

(September 2, 2003) (*Fay Candle's Date of Sale Memo*). With regard to Qingdao Kingking, its reported date of sale is based upon invoice date because both quantity and price may change up to the date of invoice. Thus, for Qingdao Kingking, the terms of the sales transaction only become fixed once the actual invoice is generated. After examining the sales documentation placed on the record by Qingdao Kingking, the Department preliminarily determines that invoice date is the most appropriate date of sale for all sales by Qingdao Kingking.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Fay Candle and Qingdao Kingking were made at prices below normal value (NV), we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

As discussed above in the "Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach" section, and as discussed in the *Affiliation Memo*, we have preliminarily determined that Fay Candle is not affiliated with its U.S. importers. Therefore, for Fay Candle and Qingdao Kingking, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deduct foreign inland freight, inland insurance, brokerage and handling expenses in the PRC, international freight, and marine insurance from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production (FOP) methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 772(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Memorandum from Sebastian Wright through Sally Gannon to The File, Regarding Factor Values Memorandum in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (September 2, 2003) (*Factor Values Memo*). We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and prior administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. *See Memorandum from Mark Hoadley through Sally Gannon to The File, Regarding Selection of Surrogate Country in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (August 13, 2003) (*Surrogate Country Memo*). We valued the factors of production using publicly available information from India. We added freight expenses to these values when necessary to make then delivered prices. All import data were contemporaneous with the POR; therefore, no adjustments for inflation were necessary. For factors valued using other sources, we have noted below when inflation adjustments were made. The calculations for the inflation adjustments can be found in the *Factor Values Memo*.

The Department calculated factors for approximately 100 inputs for this review. Except as noted below, we calculated all raw material inputs and packing using contemporaneous Indian import data obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. Consistent with our policy, we excluded from this data imports into India from NME countries and countries providing their exporters with non-specific export subsidies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational. *See, e.g., Memorandum to Jeff May, Acting Assistant Secretary for Import Administration, from Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, Regarding Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, dated May 20, 2003, at Comment 2, page 5, for a discussion of this issue. Complete data for these calculations, the calculations themselves, and full citations to sources for all inputs, whether based on Indian import data or not, are attached to the *Factor Values Memo*. The *Factor Values Memo* also indicates which import data were excluded, for any of the reasons mentioned above, and the harmonized tariff schedule section selected for each input in collecting Indian import data.

We valued several factors—depending on the respondent—and particular freight items at the average of the market economy prices actually paid, because these were purchased from market economy countries, in market economy currencies, and in meaningful quantities.

Factors valued using sources other than Indian import data or market economy purchases:

- To value wax, we used the average Indian price for paraffin wax derived from rates published in *Chemical Weekly* for the period August 2001–July 2002, as found in petitioner's July 30, 2003, surrogate value submission, and Qingdao Kingking's August 1, 2003 surrogate value submission. Since the petitioner's and Qingdao Kingking's *Chemical Weekly* price quotes are contemporaneous with the POR, we did not adjust for inflation. This price was adjusted on a tax-exclusive basis to account for the Indian excise tax of 16 percent.
- To value diesel oil, we used Indian commercial prices for diesel fuel published in the first quarter 2001 edition of the International Energy Agency's *Energy Prices and Taxes*. This price for diesel oil was provided exclusive of Indian excise tax. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo*.
- To value electricity, we used the annual report of an Indian chemical producer, National Peroxide Ltd. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo*.
- Water was valued using the publicly available water tariff rates reported in the second *Utilities Data Book: Asian and Pacific Region*. This publication provides water tariff rates as of 1995–1996 for three areas in India: Chennai, Delhi and Mumbai. We

averaged the rupee per cubic meter rates applicable to industrial users in Chennai, Delhi, and Mumbai. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*

- For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised September 2002 (see *http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2001, International Labor Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing, and GNP data as reported in World Development Indicators, The World Bank, (Washington, DC (2002)).
- To value truck freight expenses we used nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express*, which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*
- To value factory overhead, selling, general, and administrative expenses, and profit we used information reported in the January, 2001 *Reserve Bank of India Bulletin*, "Statement 1—Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-wise" of that report for the Indian metals and chemicals (and products thereof) industries. The Department attempted to find, through Internet searches and contacts with the U.S. Foreign Commercial Service, financial statements for a candle producer in India, but was unable to do so.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margins for the period of August 1, 2001 through July 31, 2002, to be as follows:

Manufacturer/Exporter	Margin (percent)
Dongguan Fay Candle Co., Ltd ...	95.74
Qingdao Kingking Applied Chemistry Co., Ltd	13.64
Shanghai Charming Wax Co., Ltd	86.95
Shandong Jiaye General Merchandise Co., Ltd	86.95
PRC-Wide Rate	95.74

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed PRC and non-PRC exporters with separate rates, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is now 95.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, where appropriate, on the entered Customs quantity for the subject merchandise for each of the importer's entries during the review period.

Notification of Interested Parties

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this review in accordance with 19 CFR351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. The Department will notify interested parties of the hearing date of this proceeding, if one is requested, and such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, the presentations will be limited only to arguments raised in the case and rebuttal briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the schedule time. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as preliminary reminder to importers of their responsibility under 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administration review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Attachment I

Companies Listed in the *Initiation Notice* that are Subject to the PRC-Wide Rate (97 Companies):

ADP (Ningbo, PRC)
ADP Shanghai
Allock Ltd.
Amstar Business Company Limited
Anyway International Trading & Manufacturing Co., Ltd.
Aroma Consumer Products (Hangzhou) Co., Ltd.
Candle World Industrial Co.
China Hebei Boye Great Nation Candle Co., Ltd.
China Overseas Trading Dalian Corp.
China Packaging Import & Export Liaoning Co.
China Xinxing Zhongyuan (Wuhan) Imp. & Exp.
CNACC (Zhejiang) Imports & Export Co., Ltd.
Cnart China Gifts Import & Export Corp.
Dandong Hengtong Handicraft Article Co., Ltd.
Dandong Hengtong Handicraftarticle Co., Ltd.
DDP Qingdao
Dongijeng Fecund Imp. & Exp. Co., Ltd.
Ever-gain Industrial Co.
Excel Network Limited
Far Going Candle Gifts Co., Ltd.
Fu Kit
Fujian Provincial Arts & Crafts Imp. & Exp. Corp.
Fushun Candle Corporation
Fushun Economy Development Zone Xinyang Candle Factory
Fushun Huaiyuan Wax Products Co., Ltd.
Fushun Yuanhang Paraffin Products Industrial Company
Fushun Yuhua Crafts Factory
Gansu Textiles Imp. & Exp. Corp.
Green Islands Industry Shanghai Co., Ltd.
Huangyan Imp. & Exp. Corp.
Huangyan Imp. & Exp. Corp.
Jason Craft Corp.
Jiangsu Holly Corporation
Jiangsu Yixing Foreign Trade Corp.
Jilin Province Arts and Crafts
Jintan Foreign Trade Corp.
Kingking A.C. Co., Ltd.
Kuehne & Nagel (Hon Kong) Beijing
Kwung's International Trade Co., Ltd.
LI & Fung Trading Ltd.
Liaoning Arts & Crafts Import & Export
Liaoning Light
Liaoning Light Industrial Products Import & Export Corp.
Liaoning Native Product Import & Export Corporation, Ltd.
Liaoning Province Building Materials Industrial Im
Liaoning Xinyuan Textiles Import and Export
Lu Ke Trading Co., Ltd.
Ningbo Free Trade Zone Weicheng Trading Co., Ltd.
Ningbo Free Zone Top Rank Trading Co.
Ningbo Kwung's Giftware Co., Ltd.
Ningbo Kwung's Import & Export Co.
Ningbo Sincere Designers & Manufacturers Ltd.
Qingdao Allite Radiance Candle Co., Ltd.
Qingdao Happy Chemical Products Co., Ltd.
Quanzhou Wenbao Light Industry Co.
Red Sun Arts Manufacture (Yixing) Co., Ltd.
Rich Talent Trading Ltd./Smartcord Int'l Co., Ltd.
Round-the-World (USA) Corp.
Round-the-World International Trade & Trans. Service (Tianjin) Co., Ltd.
Seven Seas Candle Ltd.
Shandong H&T Corp.
Shandong Native Produce International Trading Co., Ltd.
Shanghai Arts and Crafts Company
Shanghai Asian Development Int'l Tr
Shanghai Broad Trading Co., Ltd.
Shanghai Gift & Travel Products Import & Export Corp.
Shanghai Gifts & Travel
Shanghai Jerry Candle Co., Ltd.
Shanghai New Star Im/Ex Co., Ltd.
Shanghai Ornate Candle Art Co., Ltd.
Shanghai Shen Hong Corp.
Shanghai Sincere Gifts Designers & Manufacturers, Ltd.
Shanghai Success Arts & Crafts Factory
Shanghai Xietong Group O/B Asia 2 Trading Company
Shanghai Zhen Hua c/o Shanghai Light Industrial Int'l Corp., Ltd.
Silkroad Gifts
Simon Int'l Ltd.
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (No. 339 East Baodai Road, Suzhou)
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou)
T.H.I. (HK) Ltd.
Taizhou Int'l Trade Corp.
Taizhou Sungod Gifts Co., Ltd.
THI (HK) Ltd.
Thi Group Ltd. and THI (HK) Ltd.
Tianjin Native Produce Import & Export Group Corp., Ltd.
Tonglu Tiandi
Universal Candle Co., Ltd.
Weltach
World Way International (Xiamen)
World-Green (Shangdong) Corp., Ltd.
Xiamen Aider Import & Export Company
Xiamen C&D Inc.
Xietong (Group) Co., Ltd.
Zhejiang Native Produce & Animal By-Products Import & Export Corp.
Zhong Nam Industrial (International) Co., Ltd.
Zhongnam Candle
Zhongxing Shenyang Commercial Building (Group) Co., Ltd.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils from the Republic of Korea for the period January 1, 2001, through December 31, 2001. For information on the net subsidy for the reviewed companies, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section of this notice).

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Farley or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Amended Sheet and Strip*) On August 6, 2002, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). On August 30, 2002, we received a timely request

for review of INI Steel Company (INI) [1] and BNG Steel Co., Ltd. (BNG) [2] from petitioners.[3] Also on August 30, 2002, we received a timely request for review from INI. On September 20, 2002, the Department initiated an administrative review of the CVD order on stainless steel sheet and strip in coils from the Republic of Korea, covering the period of review (POR) January 1, 2001 through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002). On February 4, 2003, the Department received questionnaire responses from the Government of Korea (GOK), INI and BNG. On April 10, 2003, the Department published in the **Federal Register** an extension of the preliminary results deadline. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Extension of Preliminary Results of Countervailing Duty Administrative Review*, 68 FR 17604. On May 21, 2003, we received supplemental responses from respondents. On July 3 through July 9, 2003, we conducted verification of the responses of INI, BNG, and the GOK.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are INI and BNG. This review covers nine programs.

Scope of Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*), provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in

[1] Formerly known as Inchon Iron and Steel Co. (Inchon). As of April 2001, Inchon changed its name to INI.

[2] Formerly known as Sammi Steel Co. (Sammi).

[3] Allegheny Ludlum, AK Steel Corporation, J&L Speciality Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (collectively petitioners).

electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[4]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[7] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 HI-C." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

[4] "Arnokrome II" is a trademark of the Arnold Engineering Company.

[5] "Gilphy 36" is a trademark of Imphy, S.A.

[6] "Durphynox 17" is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

Same Person Test for Sammi

In the previous administrative review, covering the period calendar year 2000, we acknowledged that Sammi's name was changed to BNG in March 2002. However, we declared that we were not conducting any type of entity review or successor-in-interest test in that review. We stated that we would examine the facts related to Sammi in the 2001 administrative review (*see Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea*, 68 FR 13267 (March 19, 2003) (2000 Sheet and Strip) and accompanying Issues and Decision Memorandum (*2000 Sheet and Strip* Decision Memo) at page 3 and Comment 2).

On December 6, 2000, Inchon became Sammi's majority shareholder when it completed its purchase of 68.4 percent of Sammi's shares. In the instant administrative review, we are conducting the "same person test" to determine whether Sammi was the same entity before and after Inchon's purchase of the majority of Sammi's shares.[8]

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. *See Acciai Speciali Terni S.p.A.* v. *United States*, 206 F.Supp.2d 1344, 1350 (CIT 2002); *Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62106 (October 3, 2002) and the accompanying Issues and Decision Memorandum, at Section II, "Change in Ownership." No single factor will necessarily provide a dispositive indication of any change in the entity under analysis.

Regarding the first criterion, after Inchon's majority purchase of Sammi's shares, Sammi's general business operations continued as before. Sammi's name also remained the same.[9] Moreover, Sammi's production facilities remained unchanged. With respect to its assets and liabilities, Sammi experienced no changes after Inchon's December 6, 2000, share purchase. Finally, Sammi's personnel was retained after the share purchase. *See* BNG's August 21, 2003, submission at Attachment 3, pages 7, 8, and 10.

Therefore, we preliminarily determine that Sammi was the same "person" after Inchon became Sammi's majority shareholder. Furthermore, we preliminarily determine that any allocable subsidies received by Sammi prior to Inchon's share acquisition continue to benefit the post-share-acquisition Sammi.

BNG and Cross-Ownership With INI

According to section 351.525(b)(6)(vi) of the Department's regulations, cross-ownership exists between two corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations. On December 6, 2000, Inchon became the majority shareholder of Sammi with 68 percent of Sammi's shares. The Department's regulations acknowledge that control can be exercised by one corporation over

[8] On June 23, 2003, the Department published a notice that our practice regarding the "same person test" would be modified. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the "same person test." We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003.

[9] Sammi changed its name to BNG in March 2002.

another even when that one corporation does not hold majority voting ownership. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998), preamble to CVD Regulations. The percentage of shares, therefore, is not a dispositive indicator of cross-ownership between companies. Accordingly, it is also possible, under certain extraordinary circumstances, that a corporation holding majority ownership in another corporation may not be in a position to exercise control over that corporation's assets. From March 19, 1997 until March 23, 2001, Sammi was under court receivership. Thus, Sammi was in receivership throughout the entire POR under examination in the previous administrative review. In the previous review, we therefore examined the circumstances surrounding Sammi's court receivership to determine whether Inchon could use or direct Sammi's assets as its own.

Under Korea's Company Reorganization Act, the authority for management control (*e.g.*, the right to operate the company's business, management, and disposition of the company's property) rests exclusively with the court or with the receiver appointed by the court. The information on the record of the previous review demonstrated that the control of Sammi and the ability to use and direct the company's assets were held by the court and the court-appointed receiver throughout the previous POR. Therefore, we found that while Inchon held 68 percent of Sammi's shares, it was not in the position to control Sammi's assets during the POR and into 2001. *See 2000 Sheet and Strip* Decision Memo at Comment 3. In this review, we examined the relative positions of Sammi and Inchon and found that, after the end of Sammi's court receivership, Inchon was in a position to control Sammi's assets as its own. Therefore, we find preliminarily that cross ownership, as defined under section 351.525(b)(6)(vi) of the CVD Regulations, did exist between INI and Sammi during the instant POR. Consequently, for the purpose of these preliminary results, the Department will calculate one rate for INI/BNG, in accordance with section 351.525(b)(6)(ii).

Subsidies Valuation Information

Benchmarks for Long-term Loans: During the POR, INI and Sammi had both won-denominated and foreign currency-denominated long-term loans outstanding which they received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea.

With respect to foreign sources of credit, in *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR at 15533 (March 31, 1999) (*Plate in Coils*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR at 30642 (June 8, 1999) (*Sheet and Strip*), we determined that access to foreign currency loans from Korean branches of foreign banks (*e.g.*, branches of U.S.-owned banks operating in Korea) did not confer countervailable subsidies to the recipient as defined by section 771(5) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act), and, as such, credit received by respondents from these sources was found not to be countervailable. We based this decision upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in *Plate in Coils* and *Sheet and Strip*, we determined that respondents' loans from these banks could serve as an appropriate benchmark to establish whether access to regulated sources of foreign-denominated credit conferred a benefit on respondents. As such, we preliminarily determine that lending from Korean branches of foreign banks continues to be not countervailable. Consequently, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

Based on our findings on this issue in prior investigations, we are using the following benchmarks to calculate the subsidies attributable to respondent's long-term loans obtained in the years 1991 through 2001:

(1) For countervailable, foreign-currency denominated loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the company's loans from foreign bank branches in Korea.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the company's public and private bonds. We note that this benchmark is based on the decision in *Plate in Coils*, 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used a company-specific corporate bond rate from the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils*, in which we determined that, absent company-specific interest rate information, the corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea. *Id.*

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term won-denominated interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR.

Treatment of Subsidies Received by Trading Companies: We required responses from trading companies because the subject merchandise may benefit from subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the United States by a trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POR, INI exported subject merchandise to the United States through a trading company, Hyosung Corporation (Hyosung). We required the trading company to provide a response to the Department with respect to the export subsidies under review.

Under section 351.107(b)(1) of the Department's regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the Preamble to the regulations, there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27303 (May 19, 1997). In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *Id.*

We preliminarily determine that it is not appropriate to establish combination rates, with respect to this review. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producer; second, the level of subsidies conferred upon the individual trading company with regard to the subject merchandise is insignificant.

Instead, we have continued to calculate a rate for the producers of subject merchandise that includes the subsidies received by the trading company. To reflect those subsidies that are received by the exporter of the subject merchandise in the calculated *ad valorem* subsidy rate, we first calculated the benefit attributable to the subject merchandise from subsidies received by the trading company. Next, we factored that amount into the calculated subsidy rate for the relevant producer. We then added these calculated *ad valorem* subsidies to the subsidies calculated for INI/BNG. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producer and the trading company.

I. Programs Conferring Subsidies

1. The GOK's Direction of Credit

The Department previously determined in the *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*H-beams*), and accompanying Issues and Decision Memorandum (*H-Beams Decision Memo*) at section "The GOK's Credit Policies through 1991," that the provision of long-term loans via the GOK's direction of credit policies was specific to the Korean steel industry through 1991 within the meaning of section 771(5A)(D)(iii) of the Act. Also in *H-Beams*, we determined that the provision of these long-term loans through 1991 provided a financial contribution that resulted in the conferral of a benefit, within the meaning of sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act, respectively. *Id.*

In *Plate in Coils*, 64 FR at 15332, and in *Sheet and Strip*, 64 FR at 30641, the Department examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered in the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997.

In *H-beams*, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1998, and that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. Furthermore, the Department determined in *H-Beams* that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were lower than the interest rates on comparable commercial loans, within the meaning of section 771(5)(E)(ii) of the Act. In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 at 73180, (December 29, 1999) (*CTL Plate*) the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998, and the Department made a similar finding for 1999. *See also Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*) and accompanying Issues and Decision Memorandum (*1999 Sheet and Strip Decision Memo*) at "the GOK's Direction of Credit" section.

In the *1999 Sheet and Strip Decision Memo* at "The GOK's Direction of Credit" section, we found that the GOK had control over the lending institutions during 1999. In the *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Cold-Rolled*), and accompanying Issues and Decision Memorandum (*Cold-Rolled Decision Memo*) at "The GOK Directed Credit" section, the Department found that the GOK continued to exert control over the lending institutions during 2000.

In the instant proceeding we asked the GOK for information pertaining to the GOK's direction of credit policies for 2001. The GOK did not provide any additional information stating that, "the legal costs to further contest this issue in this review overshadow any possible benefit." *See* the GOK's February 4, 2003, questionnaire response. As such, because the necessary information to determine whether the GOK has continued its direction of credit policies from 2000 through 2001 is not available on the record, the Department must base its determination on facts otherwise available. *See* section 776(a) of the Act. Moreover the GOK's willful refusal to supply this information, which involves the GOK's own policies, demonstrates its failure to cooperate to the best of its ability. *See* section 77b(b) of the Act. Accordingly, the statue authorizes the Department to employ an adverse inference in selecting among facts otherwise available. *See id.* Drawing from our determination on this issue in the previous administrative review, we preliminarily find that the GOK's direction of credit policies continued from 2000 through 2001, the POR. In addition, absent information indicating otherwise, we preliminarily find that lending from domestic banks and from government-owned banks, such as the KDB, continues to be countervailable through 2001.

INI and Sammi received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the POR. In order to determine whether these GOK directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Information" section of this notice.

Won-Denominated Loans: Regarding the calculation of the benefit on countervailable, long-term fixed-rate loans, in past cases the Department has employed the "grant equivalent" methodology, as described in section 351.505(c)(3) of the CVD Regulations, when the government-provided loan and the comparison loan have dissimilar grace periods or maturities, or where the repayment schedules are different (*e.g.*, declining balance versus annuity style).

In *2000 Sheet and Strip* Decision Memo, the Department revised its application of the grant equivalent methodology discussed in 351.505(c)(3) of the CVD Regulations. We note that section 351.505(c)(2) of the CVD Regulations states that the Department "will normally calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year (*i.e.*, the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan)." We also note that, in reference to paragraph (c)(2), the Preamble of the Department's CVD Regulations states that in situations where the benefit from a long-term, fixed-rate loan stems solely from a concessionary interest rate, it is not necessary to engage in the grant equivalent methodology. *See* 63 FR at 65369. Thus, the CVD Regulations and

the Preamble direct the Department to default to a simple comparison of interest payments made during the POR when calculating the benefit from a long-term, fixed-rate loan.

The Preamble goes on to describe those situations in which the Department shall deviate from the "simple, default methodology," and instead employ the grant equivalent methodology. The Preamble states that, "[b]ecause a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate," the Department will calculate the benefit using the grant equivalent methodology. *See* 63 FR at 65369.

There is no information on the record of these preliminary results that indicates that either INI or Sammi derived a benefit from any special repayment terms (*i.e.*, abnormally long grace periods or maturities, etc.) on their long-term, fixed-rate loans. Therefore, in accordance with section 351.505(c)(2) of the CVD Regulations, we are calculating the benefit that INI and Sammi received on their long-term, fixed-rate loans by comparing the amount of interest paid on the loan during the POR to the amount of interest that would have been paid during the POR on a comparable, commercial loan. Thus, to calculate the countervailable subsidy benefit, we first derived the benefit amounts attributable to the POR for each company's fixed and variable rate loans and then summed the benefit amounts from the loans.

Foreign Currency Denominated Loans: Neither INI nor Sammi had foreign currency denominated loans outstanding during this POR which could be used for benchmark purposes. Sammi did provide information pertaining to a foreign currency denominated bond. We have determined that this information may serve as a benchmark for INI's foreign currency denominated loans issued in 2001; however, this information is unsuitable for use as a benchmark for INI's loans received prior to 2001. Therefore, for loans issued before 2001, we have used the same benchmark rates as those applied in *2000 Sheet and Strip*. *See* INI's February 4, 2003 Questionnaire Response, Exhibit A–4.

To determine the total benefit for all directed credit, we added the benefit derived from foreign currency loans to the benefit derived from won denominated loans and divided the total benefit by INI/BNG's total f.o.b. sales value during the POR. On this basis, we preliminarily determine the countervailable subsidy to be 0.24 percent *ad valorem* for INI/BNG.

B. Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Losses

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of the payment of taxes owed is equivalent to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents, this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, INI still had an outstanding balance in this reserve during the POR. Sammi did not use this program.

In *Sheet and Strip*, 64 FR at 30645, we determined that this program was specific as it constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determined that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. *See* 64 FR 30645. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

In *2000 Sheet and Strip*, we revised our benefit calculation for this program when a company is in a tax loss position. Previously, the Department had only calculated a benefit based on the deferral of the tax payment; however, when a company returns tax reserves to taxable income while in a tax loss situation, the GOK is forgoing tax revenue. Therefore, the Department now calculates an additional benefit from this program when a company returns tax reserves to taxable income while in a tax loss situation. *See* the *2000 Sheet and Strip* Decision Memo at the "Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Losses" section. As neither INI nor Sammi was in a tax loss situation during the POR, this methodology is not applicable.

To determine the benefit conferred on INI by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 2000, as filed during the POR, by the corporate tax rate for 2000. We treated the tax savings on these funds as a short-term interest-free loan. *See* 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for INI by the weighted-average interest rate on INI's short-term won-denominated commercial loans for the POR, as described in the "Subsidies Valuation Information" section, above. We then divided the benefit by INI/BNG's total f.o.b. export sales. On this basis, we preliminarily calculated a countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

3. Article 17 of the TERCL: Reserve for Overseas Market Development

Under Article 17 of the TERCL, a domestic person engaged in a foreign trade business is allowed to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account in three yearly installments, after a two-year grace period. The balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of tax payment amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. Neither INI nor Sammi used this program during the POR; however, INI exported subject merchandise through Hyosung, which used this program during the POR.

In *CTL Plate*, 64 FR at 73181, we determined that the Reserve for Overseas Market Development program is specific under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determined that this program provides a financial contribution within

the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the companies. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 2000, by the corporate tax rate for 2000. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, we multiplied the amount of tax savings by Hyosung's weighted-average interest rate for short-term won-denominated commercial loans for the POR. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we calculate a countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

4. Technical Development Fund (RSTA Article 9, Formerly TERCL Article 8)

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three percent reserve.

In *CTL Plate,* 64 FR at 73181, we determined that this program is specific because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. *Id.* No new information, or evidence of changed circumstances, were presented in this review to warrant reconsideration of the countervailability of this program. Therefore, we continue to find this program to be countervailable. Sammi did not use this program. Record evidence indicates that INI did not contribute funds to this reserve during the POR, but it did carry a balance. Thus, to calculate the benefit on the balance, we compared the amount of taxes that it would have paid if it had only claimed the three percent tax reserve with the amount of taxes actually paid on tax reserve amount as claimed under the five percent reserve limit. Next, we calculated the amount of the tax savings earned through the use of this tax reserve during the POR and divided that amount by INI/BNG's total f.o.b. sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

5. Asset Revaluation: TERCL Article 56(2)

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. In *CTL Plate,* we found this program countervailable due to the fact that it is specific and provides a financial contribution by allowing companies to reduce their income tax liability. *See* 64 FR at 73183. No new information, or evidence of changed circumstances, were presented in this review to warrant reconsideration of the countervailability of this program.

To calculate the benefit from the program we reviewed the effect that the difference in the revaluation of depreciable assets had on INI's tax liability each year. Sammi did not use this program. We multiplied the additional depreciation in the tax return filed during the POR, which resulted from the company's asset revaluation, by the tax rate applicable to that tax return. We then divided the benefit by INI/BNG's total f.o.b. sales. Accordingly, we preliminarily determine that the net countervailable subsidy for this program is less than 0.005 percent *ad valorem* for INI/BNG.

6. Investment Tax Credits

Under Korean tax laws, companies are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the TERCL. On that date, the TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

During the POR, INI earned or used tax credits for investments in productivity increasing "facilities" (RSTA Article 24, previously TERCL Article 25) and investments in specific "facilities" (RSTA Article 25, previously TERCL Article 26). Sammi did not use either program. Under these programs, if a company invested in foreign-produced "facilities," the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced "facilities," it received a ten percent tax credit. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced "facilities," in *CTL Plate,* 63 FR at 73182, we determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act. In addition, because, under this program, the GOK forewent the collection of tax revenue otherwise due, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable.

In *Cold-Rolled,* we found that RSTA Article 24 (previously TERCL Article 25) was altered on April 10, 1998, eliminating the distinction between domestic and imported goods; therefore, any credits received after that date were not countervailable. However, we continue to find the use of investment tax credits earned on domestic investments made before April 10, 1998, to be countervailable.

INI claimed tax credits under RSTA Article 24 and RSTA Article 25 for investments that originated when there was a distinction between purchasing domestic "facilities" and imported "facilities." To calculate the benefit from these investment tax credits, we examined the amount of tax credits INI deducted from its taxes payable for the 2000 fiscal year income tax return, which was filed during the POR. We

first determined the amount of the tax credits claimed which were based upon investments in domestically-produced and specific "facilities." We then calculated the additional amount of tax credits received by the company because it earned tax credits of ten percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POR and divided that amount by INI/BNG's total f.o.b. sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy of 0.03 percent *ad valorem* for INI/BNG.

7. Electricity Discounts Under the Requested Load Adjustment Program (RLA)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990 to address emergencies in the supply of electricity by the government-owned electricity provider, Korea Electric Power Company (KEPCO). Under this program, customers with a contract demand of 5,000 kW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kW or more, are eligible to enter into an RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POR, KEPCO and INI entered into a contract pursuant to which KEPCO granted INI electricity discounts under this program.

In *Sheet and Strip*, 64 FR at 30646, the Department found this program to be specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Moreover, we found that a financial contribution was provided within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone by the government.

INI did receive discounts during the POR; therefore, we find that a financial contribution is provided to INI under this program, within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue foregone by the government. Sammi did not use this program. The benefit provided under this program is a discount on a company's monthly electricity charges. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which INI received from KEPCO under the RLA program during the POR. We then divided that amount by INI/BNG's total f.o.b. sales value for 2001. On this basis, we preliminarily determine a net countervailable subsidy of 0.01 percent *ad valorem* for INI/BNG.

8. Purchase of Sammi Specialty Steel Division by POSCO

In *Sheet and Strip*, the Department found that POSCO's 1997 purchase of Sammi's bar and pipe division constituted a countervailable subsidy. We determined that, at the time of the purchase, POSCO's actions were directed by the GOK and that this purchase was not made according to commercial considerations. This decision was based on information from POSCO, the petition, and other publicly available information, as Sammi did not participate in the investigation. *See Sheet and Strip*, 64 FR at 30638 and 30642. Sammi has, however, fully participated in this review and has provided new information that allows us to reexamine our earlier adverse facts available determination.

We previously determined that POSCO was a government-controlled company at the time it purchased Sammi's bar and pipe facility. *See Sheet and Strip* 64 FR 30642. *See also* Section III, Part A of this notice for more information concerning government control of POSCO. No new information has been provided requiring the Department to revisit its prior determination that POSCO was GOK-controlled at the time it purchased Sammi's facility. Therefore, we are considering POSCO's payment for Sammi's bar and pipe facility equivalent to a payment by the government for this facility. This payment by the government constitutes a financial contribution under section 771(5)(D)(iv) of the Act.

During this review, we provided the GOK the opportunity to present information about other similar facility purchases during the time period of POSCO's purchase of Sammi's bar and pipe facility. *See* the May 21, 2003 GOK Supplemental Questionnaire Response (GOK Supplemental), Question E1. The list provided by the GOK in response to the Department's question refers only to purchases of entire steel companies, as opposed to individual assets or facilities. *See* GOK Supplemental, Exhibit O–1. In addition, we note that POSCO was not among the purchasers listed. Thus, we have no record evidence that another purchase of this nature was made by POSCO or any other government entity. Therefore, we preliminarily find that this sale was specific to Sammi within the meaning of section 771(5A)(D)(i) of the Act.

A benefit is conferred where the government purchases goods at more than adequate remuneration. *See* Section 771(5)(E)(iv) of the Act. As used in the Act, the term "good" is expansive, encompassing more than just moveable property. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum. at "Financial Contribution" section. The definition of "goods" includes all property or possessions, and saleable commodities. *See id.* Accordingly, we preliminarily determine that Sammi's bar and pipe facility is a "good."

The next issue is whether POSCO purchased Sammi's bar and pipe facility at more than adequate remuneration. The Department is guided by section 351.511(a)(2) of the regulations. Due to the absence of evidence of either a market-determined price for this facility in Korea or a world market-price, we are determining the benefit provided by this program by evaluating whether POSCO's purchase price for this good is consistent with market principles, as described in section 351.511(a)(2)(iii) of the regulations.

In *Sheet and Strip*, we determined that the purchase of Sammi's bar and pipe facility by POSCO conveyed a countervailable benefit to Sammi. *See Sheet and Strip* and accompanying Issues and Decision Memorandum at "Purchase of Sammi Specialty Steel Division". While this decision was based on adverse facts available, the information on the record remains largely the same. In *Sheet and Strip*, we relied heavily on a report issued by the Korean Board of Audit and Inspection (BAI) which criticized POSCO's purchase of the plant. In addition it noted that POSCO did not adhere to its

own internal guidelines when evaluating this purchase, as well as several instances of items for which POSCO overpaid. *See* August 7, 2003, Verification Report for BNG in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (BNG Verification Report) at page 3 and Exhibit B–9. What new information we have received merely serves to confirm our earlier finding. In the opinion of the bankers with whom we spoke, the process in which Sammi and POSCO participated for the sale of Sammi's bar and pipe division was dissimilar to the typical sale approach in terms of timing, number of bidders, and internal approval. *See* August 7, 2003, Meeting with Private Bankers in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea, at page 2. Based on record evidence, we find that POSCO purchased this facility for more than adequate remuneration. Therefore, we preliminarily find that, to the extent that this purchase was made for more than adequate remuneration, it conferred a countervailable benefit to Sammi within the meaning of section 771(5)(E)(iv).

We used record evidence to calculate the amount POSCO overpaid for this facility. The BAI report cites several items which POSCO should have known were worth less than the value attached to them by valuation studies and includes the BAI's valuation of these items. *See* BNG Verification Report, Exhibit B–9. These items include overpayment for technologies which POSCO already possessed, not accounting correctly for certain tax breaks, and the purchase of land not required by the purchase agreement. We are using the sum of these amounts as the benefit for this program. The Department invites parties to comment on the benefit calculation for this program.

Therefore, in accordance with section 771(5)(A) of the Act, we determine that this program conferred a countervailable benefit to Sammi. On this basis, we preliminarily determine a net countervailable subsidy of 0.28 percent *ad valorem* for INI/BNG.

II. Programs Preliminarily Determined To Be Not Used

A. *Investment Tax Credits Under RSTA Articles 11, 30, and 94 and TERCL Articles 24, 27, 71.*

B. *Loans From the National Agricultural Cooperation Federation.*

C. *Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act.*

D. *Reserve for Investment under Article 43–5 of TERCL.*

E. *Export Insurance Rates Provided by the Korean Export Insurance Corporation.*

F. *Special Depreciation of Assets on Foreign Exchange Earnings.*

G. *Excessive Duty Drawback.*

H. *Short-Term Export Financing.*

I. *Export Industry Facility Loans.*

J. *Research and Development.*

K. *Local Tax Exemption on Land Outside of Metropolitan Area.*

III. Programs Preliminarily Determined To Be Not Countervailable

A. POSCO's Provision of Steel Inputs for Less Than Adequate Remuneration

In *2000 Sheet and Strip*, we found that POSCO's provision of steel inputs for less than adequate remuneration was countervailable on the basis that the GOK, through POSCO, provided a financial contribution. However, we noted at Comments 9 and 10 of the *2000 Sheet and Strip* Decision Memo that we would analyze POSCO's privatization in the course of the instant administrative review.

In the instant review, we preliminarily find that the evidence relied upon in the previous determinations has changed, and, therefore, the Department's earlier finding is no longer applicable. Specifically, in previous determinations, the Department concluded that the GOK controlled POSCO on the basis of a number of factors, including: (1) The GOK was the largest shareholder, (2) the GOK enacted a law that restricted individual shareholders from exercising voting rights in excess of three percent of the company's common share and the inclusion of a similar restriction in POSCO's Articles of Incorporation, (3) POSCO was designated as a "public company," (4) POSCO's chairman and half of POSCO's outside directors were appointed by the GOK, and (5) POSCO's chairman and several of POSCO's appointed directors were former senior government officials.

With respect to the first factor, during the POR, the GOK no longer was the largest owner of POSCO's shares. During 2001, the largest GOK-owned holder of POSCO's shares was the Industrial Bank of Korea (IBK), the only entity with GOK ownership that held more than one percent of POSCO's shares during this period. The IBK held 3.12 percent of POSCO's common shares as of December 31, 2001. The single largest shareholder of POSCO's shares at the end of 2001 was POSTECH, with 3.14 percent. POSTECH is a technical university owned by POSCO. With respect to the second and third factors, POSCO's designation as a "public company" was removed on September 26, 2000, which also removed the restriction on an individual shareholder's voting rights. However, the latter became effective during the POR on March 16, 2001, when the clause included in POSCO "s Articles of Incorporation restricting individual ownership was officially removed at the General Shareholders Meeting.

Regarding the fourth and fifth factors, in March 1999, POSCO revised its Articles of Incorporation, establishing new procedures for selecting members of the Board of Directors (BOD), assuring the independence and transparency of the selection process. During the General Meeting of Shareholders, held on March 17, 2000, two outside directors who were former government employees resigned. During the POR, none of the standing directors on POSCO's BOD were former government employees or officials, while two of eight outside directors were former government employees or officials. Moreover, while POSCO's current chairman is the same individual that was appointed by the President of Korea, he was subsequently reappointed by the shareholders in March 2001.

In light of these changes, we preliminarily determine that the GOK did not control POSCO during the POR. As such, we also preliminarily find that absent GOK control over POSCO, there is no longer a government financial contribution as defined by section 771(D)(iii) of the act, and, therefore, that this program is no longer countervailable.

B. Electricity Discounts Under the Voluntary Electric Power Savings Adjustment Program

We examined at verification the voluntary electric power savings adjustment (VEPS) program, Article 107–2 of the Regulation on Optional Electricity Supply. This program is associated with the VRA program previously examined by the Department and found not countervailable. *See Sheet and Strip* at 30647. The goal of the VEPS program is to reduce customers' electricity usage during the summer months, when demand is normally high. Under this program, KEPCO gives discount incentives to general, industrial, and educational customers with a contract maximum demand per month (MDM) of 1000 kilowatts (kW) or more who reduce their electricity usage during peak season (*i.e.*, summer).

KEPCO forecasts the dates in the peak season, usually July and August, when each participating company could curtail its usage. For a company to receive discounts under this program, the company would have to decrease its usage by 20 percent or more over 30 minutes on the contracted dates. The total average for all of the contracted dates must be 20 percent or more and the curtailed period must be over five days or five 30-minute periods, or units, to receive the discount. The discount amount is calculated on the actual curtailment of power. KEPCO calculates the actual power usage during 10 a.m. to 12 p.m. on the day the reduction is to take place. KEPCO then calculates the actual usage during 2 p.m. to 4 p.m. that same day. By comparing these two measurements, KEPCO is able to determine if the company reduced its power usage by the required amount. If the company curtails its power for at least 5 units, KEPCO will determine the total power reduction and then calculate the discount based on this amount. The discount will then be applied to the following month's electricity bill. If the company determines that it does not want to reduce its power on the dates specified, the company would not receive the discount.

We analyzed whether the VEPS program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the VEPS, all general, educational, and industrial customers who have the necessary contract demand are eligible to participate in the discount program. Therefore, based on our analysis of the law, we preliminarily determine that the VEPS electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the VEPS program and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the VEPS are distributed to a large number of firms in a wide variety of industries. *See* August 7, 2003, Verification Report for the GOK in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (GOK Verification Report) at pages 6–7. Therefore, after analyzing the data with respect to the large number of companies and diverse number of industries which received electricity discounts under this program during the POR, we determine that the VEPS program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we preliminarily find that the VEPS program is not countervailable.

C. Kangwon's Debt-to-Equity Swap

Petitioners allege that Kangwon Industries Ltd. (Kangwon) received a countervailable benefit through a debt-for-equity swap and that the benefit is attributable to INI. *See* the April 18, 2003, New Subsidy Allegation Memorandum from the team to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, which is on file in the Department's central records unit (CRU). Specifically, petitioners state that on March 15, 2000, Kangwon merged with Inchon. At the same time as the merger, a substantial number of Kangwon's creditors agreed to forgive Kangwon's debt in exchange for shares in Kangwon. Petitioners state that record evidence indicates that the GOK owned or controlled many of the banks that participated in the swap.[10] Furthermore, petitioners allege that Kangwon was unequityworthy in 2000, the year of the debt-for-equity swap. They base their allegation of Kangwon's unequityworthiness on the fact that the company was found uncreditworthy in 1998. *See Final Affirmative Countervailing Duty Determination of Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) and accompanying Issues and Decision Memorandum.

Petitioners argue that the GOK-owned banks' decision to participate in the swap was inconsistent with the usual investment practice of private investors, and, therefore, conferred a benefit upon Kangwon and its parent company, Inchon, within the meaning of section 771(5)(E)(i) of the Act, in the form of a government equity infusion, as the equity for which the debt was exchanged was worthless at the time of its issuance. Petitioners further allege that the debt-for-equity swap constitutes a government financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone. In addition, they allege that this program is specific under section 771(5A)(D)(iii)(IV) of the Act, as this transaction was limited to Kangwon.

On June 26, 1999, Kangwon and Inchon entered into a memorandum of understanding (MOU) regarding the merger. On July 27, 1999, Kangwon and Inchon established a task force team to carry out the merger. On October 15, 1999, at the 8th Creditor Financial Institutions' Conference (Creditors' Conference) the creditors voted on seven agenda items that detailed the different financial transactions and agreements, as well as Kangwon's merger with Inchon. Five of these seven items passed with the required 75 percent approval of creditors who were signatories to the CRA. On November 1, 1999, at the 9th Creditors' Conference, the final two agenda items were approved. Then, on November 2, 1999, the BOD of both Inchon and Kangwon met to approve the merger, and the two companies entered into the merger agreement. On December 14, 1999, Kangwon's shareholders met and approved the merger, and on January 7, 2000, Inchon's shareholders met and approved the merger. On January 12, 2000, the debt-to-equity swap was made. The financial transactions completing the merger were executed on March 15, 2000, and Kangwon's stocks were swapped for Inchon's stocks. On March 16, 2000, Inchon reported the merger to the Korean Stock Exchange. On July 31, 2000, the companies entered into the supplemental agreement for the merger, which included additional financial guarantees.

We examined this issue at length during verification (*see* GOK Verification Report and the August 7, 2003, Verification Report for INI in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (INI Verification Report)). We found that the debt-to-equity swap was agreed to by Kangwon's creditors on the condition that the merger was completed, that an interest rate adjustment on Kangwon's outstanding debt would be considered, that the share issuance price should be the market price, and that Inchon could not choose the loan types that would be converted to equity. *See* INI Verification Report at 5. Moreover, we found that the terms of the merger and the swap were part of the same agreement, *i.e.*, the 1999 Merger Agreement was approved by Inchon's and Kangwon's BOD at the same time. Based on record evidence and information collected during verification we preliminarily find that, because the swap took place on the condition of the merger's completion, Kangwon's creditors were effectively exchanging their debt for equity in

[10] *See* the April 19, 2000, Memorandum to Melissa Skinner, Re: Verification Report for Kangwon Industries, Ltd. in the Countervailing Duty Investigation of Structural Steel Beams from the Republic of Korea (Kangwon Verification Report), which is on the record of the instant administrative review.

Inchon, an equityworthy company. Thus, in accordance with Section 771(5)(E)(i) of the Act, we find that this investment decision is not inconsistent with the usual practice of private investors and did not confer a benefit to Kangwon. Therefore, we preliminarily find this program to be not countervailable.

C. Debt Forgiveness Provided to Sammi by KAMCO

Sammi received debt forgiveness as part of a workout plan agreed to by Sammi's creditors while Sammi was under court receivership from March 18, 1997 until March 23, 2001. KAMCO, a government-owned entity, was Sammi's lead creditor during a portion of Sammi's time under court receivership. In the previous review, petitioners argued that even though this debt forgiveness occurred in the context of bankruptcy proceedings, the debt forgiveness was specific. *See 2000 Sheet and Strip* Decision Memo at Comment 7. They cited a newspaper article which stated that the workout plan, in which the debt forgiveness was included, was the first such plan in which KAMCO, acting as the lead creditor, had participated in a merger and acquisition (M&A) agreement.

In *2000 Sheet and Strip*, we did not examine this program as we were not examining information pertaining to Sammi. However, we indicated that we would examine this program in the instant review. At verification we examined KAMCO's actions as Sammi's lead creditor compared with its actions in other similar situations. The typical return that KAMCO generated on its sale of Sammi's non-performing loans (NPLs) was similar to, and even slightly higher, than the typical return that KAMCO generates on its sale of NPLs. *See* GOK Verification Report at 5. Furthermore, the exact amount of debt forgiven was determined by the purchase offers which Sammi received and not by KAMCO. *Id.* The public bidding process was also carried out by Solomon Smith Barney, an independent consultancy.

In addition, we requested information pertaining to KAMCO's participation in M&A agreements while acting as lead creditor for companies under court receivership. See GOK Verification Report, Exhibit KAM–1. Based on this information, the debt forgiveness agreed to by KAMCO with respect to Sammi's workout plan was similar to the debt forgiveness agreed to with respect to other companies in court receivership where KAMCO was the lead creditor. Therefore, we find that KAMCO's debt forgiveness to Sammi is not specific within the meaning of Section 771(5A)(D)(iii) of the Act.

Furthermore, it is the Department's practice to find that debt forgiveness in the context of bankruptcy, is not countervailable. *See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002) and accompanying Decision Memo at Comment 6. We find no evidence on the record that Sammi received special or differential treatment in the bankruptcy process. Therefore, we preliminarily find that KAMCO's debt forgiveness to Sammi is not countervailable in accordance with section 771(5)(A) of the Act.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2001 through December 31, 2001, we preliminarily determine the net subsidy for INI/BNG to be 0.56 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess countervailing duties as indicated above. The Department also intends to instruct BCBP to collect cash deposits of estimated countervailing duties as indicated above as a percentage of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 351.212(c)(ii)(2)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the BCBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, at 30664 (June 8, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001 through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Upon completion of this administrative review, the Department will determine, and BCBP shall assess, countervailing duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(2), we have calculated a company-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations

performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22943 Filed 9–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 6, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (68 FR 23972). This review covers five manufacturers/exporters of the subject merchandise to the United States. The period of review is April 1, 2001, through March 31, 2002. We are rescinding the review with respect to Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./Diler Dis Ticaret A.S. and Ekinciler Demir Celik A.S. because these companies had no entries of subject merchandise to the United States during the period of review. Finally, we have determined not to revoke the antidumping duty order with respect to ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following five manufacturers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively "Colakoglu"); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"); Ekinciler Demir Celik A.S. (Ekinciler); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS).

On May 6, 2003, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part*, 68 FR 23972 (May 6, 2003) (*Preliminary Results*). Also in May 2003, at our request we received supplemental cost information from Colakoglu.

On May 13, 2002, Diler and Ekinciler informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR). We reviewed data from the Bureau of Customs and Border Protection (BCBP) and confirmed that there were no entries of subject merchandise from either company. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Diler and Ekinciler. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

We invited parties to comment on our preliminary results of review. In June 2003, we received case briefs from the petitioners (Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation) and ICDAS, and rebuttal briefs from the petitioners, Colakoglu, and ICDAS.

The Department held a hearing on July 16, 2002, at the request of ICDAS.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written

description of the scope of this proceeding is dispositive.

Period of Review

The POR is April 1, 2001, through March 31, 2002.

Partial Rescission of Review

As noted above, Diler and Ekinciler notified the Department that they had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with the BCBP. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Diler and Ekinciler. (*See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 67 FR 66110, 66111 (Oct. 30, 2002).)

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Tariff Act of 1930 (the Act). We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying "Issues and Decision Memorandum" (Decision Memo) from Jeffrey A. May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated September 3, 2003.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Habas, and ICDAS made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 2001, through March 31, 2002:

Manufacturer/producer/exporter	Margin percentage
Colakoglu Metalurji A.S	1.62
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S	2.42
ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S.	0.10

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Habas and ICDAS, for those sales with a reported entered value, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding all of Colakoglu's sales and certain of ICDAS's sales, for assessment purposes, we do not have the information to calculate entered value because these companies were not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the export prices. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the BCBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: 1) The cash deposit rates for the reviewed companies will be the rates indicated above; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 3, 2003.

James J. Jochum,

Assistant Secretaryfor Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Interest Rate Used to Calculate Home Market Credit
2. Exchange Rates Used for Currency Conversions
3. Errors Discovered at Verification
4. Habas's U.S. Short-term Interest Rate
5. Revocation for ICDAS
6. Level of Trade (LOT) for ICDAS
7. Short-length Rebar Sales for ICDAS
8. Calculation of ICDAS's Home Market Indirect Selling Expense Ratio
9. Home Market Indirect Selling Expenses of ICDAS's Affiliated Parties
10. Credit Expenses Reported by ICDAS's Affiliated Parties
11. Start-up Adjustment for ICDAS
12. Amortization Rate Applied to the Start-Up Adjustment
13. Cost of Sales
14. General and Administrative (G&A) Expenses
15. Foreign Exchange Gains and Losses

[FR Doc. 03–22945 Filed 9–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Preliminary Results of Antidumping Duty Administrative Review: Structural Steel Beams From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the Committee for Fair Beam Imports, Nucor Corp., Nucor-Yamato Steel Co., TXI-Chaparral Steel Co., ("Petitioners"), INI Steel Company ("INI"), and Dongkuk Steel Mill Co., Ltd. ("DSM"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on structural steel beams ("SSB") from the Republic of Korea. This review covers INI and DSM, manufacturers and exporters of the subject merchandise. The period of review ("POR") is August 1, 2001 through July 31, 2002.

We preliminarily determined that INI has sold subject merchandise at less than normal value ("NV") during the POR. However, we preliminarily determine that DSM has not sold subject merchandise at less than NV. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection ("Customs") to assess antidumping duties on entries of INI's merchandise during the POR for which the importer-specific assessment rates are above *de minimis*, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed below in the section titled "Preliminary Results of Review."

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Aishe Allen (DSM) or Michael Holton (INI), Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0172 and (202) 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2000, the Department published in the **Federal Register** the antidumping duty order on structural steel beams from the Republic of Korea. *See Notice Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 50501 (August 18, 2000). On August 6, 2002, we published in the **Federal Register** a notice for antidumping or countervailing duty order, finding, or suspended investigation; opportunity to request administrative review on structural steel beams from the Republic of Korea covering the period August 1, 2001 through July 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002).

On August 30, 2002, respondent DSM, a Korean producer of subject merchandise, requested a review of its sales of subject merchandise during the POR in accordance with 19 CFR 351.213(b)(1). On August 30, 2002, petitioners and INI, in separate requests, requested that the Department conduct an administrative review of INI for the period of August 1, 2001 to July 31, 2002. On September 25, 2002, the Department published a notice of initiation of this antidumping duty administrative review for the period of August 1, 2001 through July 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews* 67 FR 60210 (September 25, 2002).

DSM

On September 30, 2002, the Department issued a questionnaire to DSM. DSM submitted its Section A questionnaire response on November 4, 2002. On November 13, 2002, DSM submitted its Sections B and C questionnaire responses.

On November 14, 2002, Petitioners submitted comments regarding sales below cost of production for DSM and requested that DSM respond to section D of the Department's September 30, 2002 questionnaire. On November 18, 2002, the Department informed petitioners that it would need to file a sales below cost allegation for the Department to consider whether DSM sold below its cost of production during the POR. On December 6, 2002, petitioners submitted an allegation that the home market sales submitted by DSM in its November 13, 2002, section B response were below its cost of production.

On December 20, 2002, the Department issued a supplemental questionnaire covering DSM's November 4, 2002 section A response. On January 13, 2003, DSM submitted its section A supplemental response to the Department's December 20, 2002 supplemental questionnaire.

On January 21, 2003, the Department initiated a sales below cost of production inquiry, and on January 22, 2003, requested DSM to respond to section D of the questionnaire.

On February 4, 2003, DSM requested that the Department allow it to report cost of production and constructed value information based on DSM's fiscal accounting period, which is based upon the calendar year (January 1 to December 31). On February 7, 2003, the Department issued a questionnaire to DSM requesting why it should not report its cost of production and constructed value data based on a fiscal year basis instead of the POR. On February 13, 2003, DSM submitted additional information regarding its cost reporting period. *See DSM's February 13, 2003 submission* at 2. Based on DSM's submission, the Department granted DSM's request that it be allowed to report its cost based on a twelve-month period that includes the second half of its 2001 fiscal year (July 1 to December 31, 2001) and the first half of its 2002 fiscal year (January 1 to June 30, 2002). *See* Memorandum to the File dated February 17, 2003.

On February 19, 2003, DSM submitted its Section D questionnaire response. On February 26, 2003, the Department issued a supplemental questionnaire covering DSM's section B response. On March 7, 2003, the Department issued a supplemental questionnaire covering DSM's November 4, 2002 Section C response. On March 24, 2003, the Department issued a supplemental questionnaire covering DSM's February 19, 2003 section D response. Also, on March 24, 2002, DSM submitted its section B response to the Department's February 26, 2002 supplemental questionnaire. On April 4, 2003, DSM submitted its section C response to the Department's March 7, 2003 supplemental questionnaire. On April 11, 2003, the Department issued a second supplemental questionnaire covering DSM's January 13, 2003 Section A response.

On April 21, 2003, DSM submitted its section D response to the Department's March 24, 2003 supplemental questionnaire. On May 6, 2003, DSM submitted its section A response to the Department's April 11, 2003 second supplemental questionnaire. On May 20, 2003, the Department issued a second supplemental questionnaire covering DSM's Section B response. On June 5, 2003, the Department issued a second supplemental questionnaire covering DSM's Section C response. On June 11, 2003, DSM submitted its section B response to the Department's May 20, 2003 second supplemental questionnaire. On June 24, 2003, DSM submitted its section C response to the Department's June 5, 2003 second supplemental questionnaire.

On June 26, 2003, the Department issued a second supplemental questionnaire covering DSM's Section D response. On July 8, 2003, DSM submitted its section D response to the Department's June 26, 2003 second supplemental questionnaire. On August 11, 2003, the Department determined that DSM and the Korean trading company it used were actually affiliated companies during the POR. *See* Analysis of the Affiliation Dongkuk Steel Company section below and *Antidumping Duty Administrative Review on Structural Steel Beams from South Korea for the Review Period of August 1, 2001 through July 31, 2002; Analysis of the Affiliation for Dongkuk Steel Mill Company, Ltd.*, from Aishe Allen through Robert Bolling to Edward Yang, dated August 11, 2003 ("*Affiliation Memorandum*").

INI

On September 25, 2002, the Department issued its antidumping questionnaire to INI. On November 4, 2002, INI reported that it made sales of subject merchandise to the United States during the POR in its response to Section A of the Department's questionnaire. On November 26, 2002, INI submitted its response to Sections B, C, and D of the Department's questionnaire. On March 14 and 19, 2003, the Department issued supplemental Sections A through C and Section D questionnaires, respectively. INI submitted its response to the Sections A through D supplemental questionnaires on April 11, 2003. On May 28, 2003, the Department issued its second supplemental questionnaires for Sections A through C. On May 30, 2003, the Department issued a third supplemental questionnaire for Section B. On June 9, 2003, INI submitted its response to the Sections A through D second supplemental questionnaires. On June 6, 2003, the Department issued a second supplemental Section D questionnaire. On June 13, 2003, INI submitted its response to the Department's second Section D supplemental questionnaire. On June 13, 2003, the Department issued a third supplemental questionnaire for Sections B through D to INI. On June 18, 2003, INI submitted its response to the third supplemental questionnaire for Sections B through D.

On April 17, 2003, due to the reasons set forth in the *Structural Steel Beams From Korea: Extension of Time Limit for Preliminary results of Antidumping Duty Administration Review*, 68 FR 18947 (April 17, 2003), the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results 120 days, from the original due date of May 3, 2003, to August 31, 2002. *See Structural Steel Beams From Korea: Extension of Time Limit for Preliminary results of Antidumping Duty Administration Review*, 68 FR 18947 (April 17, 2003).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, the Department verified sales information of INI on June 23 through 27, 2003, sales information of DSM from July 21 through July 25, 2003, and sales information of DSM's United States affiliate Dongkuk International, Inc. ("DKA"), July 29 through July 31, 2003, using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit ("CRU") located in room 1870 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Scope of the Review

The products covered by this investigation are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060,

7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) purposes, the written description of the merchandise under investigation is dispositive.

Product Comparison

In accordance with section 771(16) of the Act, we considered all SSB produced by DSM and INI covered by the description in the "Scope of Review" section of this notice, *supra*, which were sold in the home market during the POR, to be the foreign like product for the purpose of determining appropriate product comparisons to SSB products sold in the United States. In making the product comparisons, we matched products based on the physical characteristics reported by DSM and INI as follows (listed in order of preference): hot formed or cold formed, shape/size (section depth), strength/grade, whether or not coated. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Affiliation

In order to complete the dumping calculation, the Department must determine whether the Korean trading company that DSM sold subject merchandise through is affiliated. DSM reported that it sold subject merchandise during the POR to an unaffiliated Korean trading company and reseller of the subject merchandise, which, in turn, resold the subject merchandise to DKA, an affiliated U.S. importer. As discussed below, the Department preliminarily determines that the Korean trading company is affiliated with DSM.

Information submitted on the record by DSM in its original Section A response indicates that DSM was not affiliated with the Korean trading company during the POR. In the Section A response, DSM reported that in January of 2001, it sold all of its ownership interest in the Korean trading company and was, therefore, no longer affiliated. *See* DSM's November 4, 2002, Section A questionnaire response. On April 7, 2003, petitioners requested that the Department investigate DSM's continuing relationship with the Korean trading company, based on familial ownership in both companies. In response to the Department's April 11, 2003 second supplemental Section A questionnaire, DSM submitted information which demonstrated that there was a familial relationship between itself and the Korean trading company during the POR. *See* DSM's May 5, 2003 second supplemental Section A response. The information submitted on May 5, 2003, suggested that there was the requisite amount of control for affiliation between DSM and the Korean trading company. Based on record evidence, the Department has determined that DSM and the Korean trading company were affiliated during the POR, according to section 771(33)(A) and (F) of the Act. Due to the proprietary nature of this information and for a complete discussion of this issue, please see the *Affiliation Memorandum*.

Sales Outside the Ordinary Course of Trade

On February 12, 2003, Petitioners alleged that INI made sales outside the ordinary course of trade ("OCT") during the POR. Petitioners alleged that all of INI's home market sales of non-Korean specification ("non-KS") SSBs are outside the OCT based on total volume sold, the customer base, price per shipment and profitability of sales, and should be excluded from the home market database in the margin calculation. Additionally, Petitioners claim that all non-KS sales are overruns. Further, Petitioners stated that if the Department decided not to exclude all of INI's non-KS merchandise, then Petitioners have alleged that certain non-KS home market sales are aberrational and outside the OCT, and should be excluded from the home market database in the calculation of the margin. The Department has determined, based on record evidence, that certain INI home market sales are outside the OCT, and thus have made changes to INI's home market sales database. However, due to the proprietary nature of this information and for a complete discussion of this issue, please see the memorandum of *Analysis of Sales Outside the Ordinary Course of Trade for INI Steel Company* from Stephen Bailey and Michael Holton to Edward Yang dated September 2, 2003 ("*OCT Memorandum*"); and *Analysis Memorandum for INI Steel Company for the Preliminary Results of the Administrative Review on Structural Steel Beams ("SSB") from Korea for the period August 1, 2001 through July 31, 2002*, September 2, 2003 ("*INI Analysis Memorandum*").

Fair Value Comparisons

To determine whether sales of subject merchandise made by DSM and INI to the United States were made at prices below NV, we compared the export price ("EP"), or the constructed export price ("CEP"), to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below.

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . . .," as adjusted under subsection (c). Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. . . .," as adjusted under subsections (c) and (d). For the purpose of this administrative review DSM classified all of its U.S. sales as CEP, and INI has classified its U.S. sales as either EP or CEP.

DSM

DSM identified one channel of distribution for its U.S. sales. For U.S. sales, DSM sold all subject merchandise to an affiliated trading company in Korea (see affiliation section above), the subject merchandise was then resold by the affiliated trading company in Korea to DSM's U.S. affiliate, DKA. and DKA then resold the subject merchandise to unaffiliated U.S. customers. DSM has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with

section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling expenses (*i.e.*, loading and unloading charges, wharfage and lashing expenses, brokerage fees, and port renovation expenses), international freight, marine insurance, other U.S. transportation expenses (*i.e.*, U.S. wharfage, brokerage, and handling charges), and U.S. customs duty. Also, we made deductions for commissions for selling the subject merchandise in the United States in accordance with section 772(d)(1)(A) of the Act. Additionally, we made deductions for expenses that bear a direct relationship to the sale in the United States (*i.e.*, credit, and other direct selling expenses) pursuant to section 772(d)(1)(B). We added an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Further, in accordance with section 772(c)(1)(A) of the Act, we added packing expenses.

For CEP sales, we also made an adjustment for profit in accordance with section 772 (d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total, expenses for both the U.S. and home markets.

We changed the U.S. indirect selling expense ratio to correspond to the information contained in the finalized version of DKA's audited financial statements. *See Analysis Memorandum for Dongkuk Steel Mill Company ("DSM") for the Preliminary Results of the Administrative Review on Structural Steel Beams ("SSB") from Korea for the period August 1, 2001 through July 31, 2002*, September 2, 2003 ("*DSM Analysis Memorandum*"); *Sales Verification of Dongkuk International ("DKA") in the Antidumping Administrative Review of Structural Steel Beams ("SSB") from Korea*, August 28, 2003 ("*DKA Verification Report*").

Furthermore, we have included the selling and general administrative ("SG&A") expenses of the affiliated trading company in Korea (*see* section on affiliation above) in the calculation of U.S. net price because all of DSM's U.S. sales pass through the Korean trading company. To account for these SG&A expenses, the Department used financial statements of the affiliated trading company in Korea. Additionally, DSM failed to account for bad debt, interest, currency difference, and loss of sale assets when calculating its indirect selling expense ratio for DKA. For a detailed explanation, *see DSM Analysis Memorandum*.

INI

For this administrative review, INI reported that it sold both EP and CEP sales. EP sales were sold by the producer, INI, to an unaffiliated customer in the United States. The Department has determined that the sales made between INI's U.S. affiliate, Hyundai USA Corporation ("Hyundai USA"), and the first unaffiliated customer in the United States are CEP sales.

Having determined certain sales as EP, we calculated the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, other U.S. transportation expenses (*i.e.*, U.S. brokerage charges), commissions, and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made adjustments to gross unit price for billing adjustments.

We calculated the price of INI's sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, other U.S. transportation expenses (*i.e.*, U.S. brokerage charges), and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made a deduction to gross unit price for other discounts. Also, in accordance with section 772(c)(2)(A) of the act, we deducted packing expenses. In accordance with section 772(d)(1) of the Act, we deducted certain selling expenses (*i.e.*, imputed credit expenses and bank expenses) and indirect selling expenses.

For CEP sales, we also made an adjustment for profit in accordance with section 772 (d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

For both EP and CEP sales, we made certain changes to INI's packing expenses based on pre-verification corrections. *See INI Steel Company Home Market Sales and United States Sales Verification Report; Antidumping Duty Administrative Review on Structural Steel Beams from Korea*, dated August 20, 2003 ("*INI Verification Report*").

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared DSM and INI's volume of home market sales of the foreign like product to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because both DSM and INI's aggregate volume of home market sales of the foreign like product were greater than five percent of their aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in Korea, in the usual commercial quantities, in the ordinary

course of trade, and, to the extent possible, at the same level of trade ("LOT") as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value Price Comparisons" sections of this notice.

2. Arm's-Length Test

INI reported that it made sales in the home market to affiliated and unaffiliated end users and unaffiliated distributors. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the affiliated party were made at arm's length. See 19 CFR 351.403(c).[1] Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of INI's affiliated home market customer(s) did not pass the arm's length test. We did not consider the downstream sales from these customers to the first unaffiliated customer because INI's affiliated home market customers further manufactured the subject merchandise into merchandise outside of the scope of the order.

3. Cost of Production Analysis

DSM

Based on the information contained in a timely filed cost allegation by the petitioners on December 6, 2002, the Department found reasonable grounds to believe or suspect that DSM's sales of the foreign like product in their respective comparison market were made at prices below the cost of production, pursuant to section 773(b)(1) of the Act based on allegations made by petitioners in this case. *See Petitioners' Allegation of Sales Below Cost of December 6, 2002.* As a result, the Department initiated a sales below-cost investigation. *See Letter of Initiation of Sales Below Cost Investigation* dated January 22, 2003.

INI

Because the Department disregarded certain INI sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that INI made sales in the home market at prices below the cost of producing the merchandise in this review. *See Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 68 FR 2499 (January 17, 2003); and section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on September 30, 2002, to determine whether INI made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of DSM and INI's respective costs of materials and fabrication for the foreign like product, plus amounts for home market SG&A, including interest expenses, and packing costs. The Department relied on the COP data submitted by DSM and INI in their original and supplemental cost questionnaire responses.

For the purpose of these preliminary results, we did not revise the COP information submitted by DSM or INI.

B. Test of Home Market Prices

We compared the weighted-average COP for DSM's and INI's home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of DSM or INI's sales of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of DSM or INI's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 CFR 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated DSM's and INI's CV based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by DSM and INI in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

DSM

For those product comparisons for which there were sales at prices above the COP, we based NV on the home

[1] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 69186, 69197 (November 15, 2002).

market prices to unaffiliated purchasers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit and other discounts, where appropriate in accordance with section 773(a)(6)(C) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. We also made adjustments, where applicable, for other discounts, indirect selling expenses and inventory carrying costs in accordance with section 773(a)(6)(C) of the Act. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

We made changes to the reported variable cost of manufacturing, total cost of manufacturing and home market inventory carrying costs to account for a change in grade that was reported as a minor correction to the home market database at the start of verification. *See* DSM Analysis Memorandum and DSM Verification Report at page 2.

INI

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, and inland freight from plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Where applicable, we modified the gross unit price based on billing adjustments. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

For these preliminary results, we excluded certain home market sales from INI's reported home market sales data in the calculation of NV based on these sales being outside the ordinary course of trade. *See OCT Memorandum* and *INI Analysis Memorandum*. We also made certain changes to INI's packing expenses based on pre-verification corrections. *See* ("*INI Verification Report*")

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on DSM's and INI's costs of materials and fabrication employed in producing the subject merchandise, SG&A including interest, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Korea. For selling expenses, we used the actual weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this administrative review, we obtained information from INI about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

DSM

In accordance with the principles discussed above, we examined information regarding DSM's distribution systems in both the United States and Korean markets, including selling functions, classes of customers, and selling expenses for DSM.

DSM claimed only one level of trade in the home market. *See* DSM's November 13, 2002 submission at page B–20. Additionally, DSM reported that it sold through two channels of distribution in the home market: directly to unaffiliated customers (distributors and end-users); and government entities. *See* DSM's November 13, 2002 submission at page B–9. DSM reported that it performs the following selling functions in the home market: market research, price negotiations, order processing, sales calls and demonstrations, customer interaction, inventory maintenance, warranty services, and freight and delivery arrangement. *See* DSM's November 4, 2002 submission at Exhibit 6. Because DSM performs the same selling functions for its two channels of distribution in the home market and identical selling functions are performed for all home market sales, we

preliminarily determine that there is one LOT in the home market.

DSM claimed one level of trade in the U.S. market because all of its U.S. sales are CEP sales made through its U.S. affiliate, DKA. *See* DSM's November 4, 2002 submission at page 12. DSM reported that it sold through one channel of distribution in the U.S. market, directly from its production facility to the unaffiliated U.S. customer. However, on paper, the sales process is as follows: DSM sold the merchandise to an affiliated Korean trading company, which then resold the merchandise to its U.S. affiliate, DKA, which resold the merchandise to the unaffiliated U.S. customer. *See* DSM's November 13, 2002 submission at page C–9. We determined the LOT of DSM's CEP sales based on the CEP starting price, and adjusted for selling expenses identified in section 772(d) of the Act. We found that the selling functions (*i.e.*, price negotiations, order processing, sales calls and demonstrations, inland freight arrangement in Korea, and international freight arrangement) DSM performs after the section 772(d) adjustments are the same for all of its U.S. sales. *See* DSM's November 4, 2002 submission at Exhibit 6. Therefore, we preliminarily determine that DSM has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) DSM and its home market customers and (2) DSM and its affiliated U.S. reseller, DKA, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities which occurred in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. DSM did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that DSM provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller, DKA, as it provided for its home market sales, including: Price negotiation; order processing; sales calls and demonstrations; warranty services; and freight arrangement. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that DSM's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

INI

To determine whether an LOT adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S. and home markets, INI reported one level of trade. *See* INI's November 26, 2002, Sections B–D response, at B–16 and C–16. INI sold through two channels of distribution in the home market: (1) Unaffiliated distributors; and (2) affiliated and unaffiliated end-users. INI claims to have sold through two channels of distribution in the U.S. market: (1) INI sales to unaffiliated U.S. customers; and (2) INI sales through Hyundai U.S.A., a wholly owned U.S. subsidiary of Hyundai Corporation (Hyundai Corporation is INI's affiliated trading company in South Korea), to unaffiliated customers.

For sales in home market channels one and two, INI performed all sales-related activities, including: Inventory maintenance; after sales services/warranty; freight and delivery arrangement; and credit. INI's home market sales in channels one and two were made from inventory. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For sales in U.S. channels one and two, INI performed all sales-related activities, including: After sales services/warranty; freight and delivery arrangement; credit and import documents arrangement. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between INI and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. In the present review, INI did not request a LOT adjustment or a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that INI offered many of the same selling functions in both markets, including: After sales services/warranties; freight and delivery arrangement; and credit. Accordingly, we determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Consequently, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case. Furthermore, we find INI's NV and EP sales were made at the same LOT, and thus, no LOT adjustment need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weight-averaged dumping margin exists for the period August 1, 2001 through July 31, 2002:

STRUCTURAL STEEL BEAMS FROM KOREA

Producer/Manufacturer/Exporter	Weighted-average margin %
DSM	0.04
INI	4.15

The Department will disclose calculations performed, within five days of publication of this notice, to the

parties to this proceeding in accordance with 19 CFR 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii) of the Department's regulations. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d) of the Department's regulations. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice, pursuant to 751(a)(3)(A) of the Act.

Assessment

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we will calculate exporter/importer specific assessment rates for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importers' entries during the review period.

Cash Deposit

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for DSM and INI will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 37.21 percent.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the 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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22941 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–502]

Welded Carbon Steel Pipes and Tubes from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty New Shipper Review: Welded Carbon Steel Pipes and Tubes from India.

EFFECTIVE DATE: September 9, 2003.

SUMMARY: On July 3, 2003, the Department of Commerce published in the Federal Register a notice announcing the initiation of a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India, covering the period May 1, 2002, through April 30, 2003. The review covered Surya Roshni, Ltd. On August 25, 2003, the request was withdrawn subsequent to the initiation of the new shipper review and, therefore, we are rescinding this review.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross at (202) 482–1690 and (202) 482–4794, respectively, AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty-order on welded carbon steel pipes and tubes from India was published on May 12, 1986 (51 FR 17384). On May 30, 2003, we received a request for a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India from Surya Roshni Ltd. (Surya). Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we initiated a new shipper review on July 3, 2003, for shipments of welded carbon steel pipes and tubes from India produced and exported by Surya (68 FR 39897). Surya withdrew its request for a new shipper review on August 25, 2003.

Rescission of New Shipper Review

Section 19 CFR 351.214(f)(1) provides that the Department of Commerce may rescind a new shipper review if the party that requested the review withdraws its request for review within sixty days of the date of publication of

the notice of initiation of the requested review. Surya withdrew its request within the 60-day period. Accordingly, we are rescinding this new shipper review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments of welded carbon steel pipes and tubes from India produced and exported by Surya, entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the Federal Register.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is published in accordance with section 751(a) of the Act and 19 CFR 351.214(f)(3).

September 3, 2003.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–22944 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (the "Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register**, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03–00005." A summary of the application follows.

Summary of the Application

Applicant: American Commodity Company, LLC, 18242 Hwy 113, P.O. Box 224, Robbins, CA 95676.

Contact: Martin S. Simon, Consultant.

Telephone: (908) 604–6768.

Application No.: 03–00005.

Date Deemed Submitted: August 28, 2003.

Members (in addition to applicant): None.

American Commodity Company, LLC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

1. Products

U.S. rice and rice products (rough rice, brown rice, milled, undermilled or unpolished rice, coated rice, oiled rice, enriched rice, rice bran, rice polish, head rice, broken rice, secondhead rice, brewers rice, screenings, rice flour, and rice hulls).

2. Technology Rights

Technology Rights, including, but not limited to: patents, trademarks, service marks, copyrights, trade secrets and know-how that relate to Products.

3. Export Trade Facilitation Services (As They Relate to the Export of Products and Technology Rights)

Export Trade Facilitation Services, including but not limited to, arranging and coordinating delivery of rice to port of export, arranging for inland and/or ocean transportation, allocating rice to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, quality control, financing, freight forwarding, insurance and documentation; reviewing letters of credit; invoicing foreign buyer; collecting payment; and arranging for payment of applicable brokerage fees and commissions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products, licensing of Technology Rights, and provisions of Export Trade Facilitation Services, under its proposed Export Trade Certificate of Review, the American Commodity Company, LLC may:

(a) Exchange information with suppliers individually regarding availability of and prices of rice available for sale to export, inventories, production and delivery schedules in order to determine availability of rice for purchase and for export and to coordinate export of U.S. rice;

(b) Solicit offers from suppliers to sell rice to American Commodity Company, LLC for a specific export opportunity;

(c) Obtain agreements from suppliers to offer/sell rice through the certified

activities of American Commodity Company, LLC;

(d) Establish prices, quantities and terms for sales of rice in export markets;

(e) Solicit orders from potential foreign distributors and purchasers of U.S. rice for delivery to export markets;

(f) Submit offers to potential distributors and purchasers for sale of U.S. rice for delivery to export markets;

(g) Negotiate and enter into agreements for sale of U.S. rice in export markets;

(h) Enter into agreements to purchase U.S. rice from one or more suppliers to fulfill a specific sales commitment, which may be agreements whereby suppliers agree to sell exclusively to American Commodity Company, LLC for delivery in a particular export market or markets and/or whereby American Commodity Company, LLC agrees to purchase exclusively from particular supplier(s) for resale of U.S. rice in a particular export market or markets;

(i) Enter into agreements with one or more export trade intermediaries or purchasers for their purchases of U.S. rice which may be agreements whereby American Commodity Company, LLC agrees to deal exclusively with a given customer and/or by which that customer agrees to deal exclusively with American Commodity Company, LLC and/or agrees not to purchase from competitors of the American Commodity Company, LLC unless authorized by American Commodity Company, LLC to do so;

(j) Allocate sales of U.S. rice and/or distribute export orders among suppliers on any basis American Commodity Company, LLC deems appropriate;

(k) Act as broker and/or operate as sub-contractor to suppliers and possibly taking title to U.S. rice;

(l) Utilize applicable export assistance and incentive programs which are available to American Commodity Company, LLC within the government and trade sectors;

(m) Provide and/or arrange for the provision of Export Trade Facilitation Services;

(n) Use its discretion, in good faith, to purchase rice or provide information regarding export sales of rice to any suppliers or other entities of its choosing, for any reason the American Commodity Company, LLC deems appropriate;

(o) Use its discretion, in good faith, to sell rice, quote prices for rice, provide information regarding rice, or to market or sell rice to any distributors or purchasers of its choosing in export markets or in any countries or geographic areas in export markets; and

(p) Meet with suppliers or other entities periodically to discuss general matters specific to exporting U.S. rice (not related to price and supply arrangements between applicant and the individual suppliers) such as relevant facts concerning export markets (*e.g.*, demand conditions, transportation costs and prices) or the possibility of joint marketing, selling or bidding arrangements in the export markets.

Definition

"Supplier" means a person who produces, provides or sells a Product.

Dated: September 3, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–22861 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 18, 2003. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, review feedback to first stage applicants, begin stage III of the judging process, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, September 15, 2003, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene September 18, 2003 at 9 a.m. and adjourn at 3 p.m. on September 18, 2003. It is estimated that the closed portion of the meeting will last from 9 a.m. until 2 p.m. and the open portion of the meeting will last from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: September 2, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–22896 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303A]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage.

DATES: The meetings will be held on October 6 through October 14, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times. All meetings are open to the public except executive sessions.

ADDRESSES: The meetings will be held at the Sheraton Hotel, 401 E 6th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, October 6 and continue through Saturday, October 11, 2003. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, October 6, and continue through Wednesday, October 11, 2003. The Enforcement Committee will meet Tuesday, October 7, at 6:30 p.m.

The Council will begin its plenary session at 8 a.m. on Wednesday, October 8 continuing through Wednesday October 14.

Council Plenary Session: 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) NMFS Management/Enforcement Reports
(c) United States Coast Guard Report
(d) Alaska Department Fish & Game Reports

2. Gulf of Alaska Rationalization (GOA): Receive report from Joint Protocol Committee; review discussion paper on GOA crab/salmon bycatch and take action as necessary; review staff discussion paper on alternatives and options, open access fisheries, License Limitation Program transfers and catch history, allocation of community shares, observer issues, and Environmental Impact Statement (EIS) alternatives.

3. Community Development Quota (CDQ) Issues: Review proposed appeals process; review discussion paper on eligible CDQ communities.

4. Essential Fish Habitat (EFH)/ Habitat Areas of Particular Concern (HAPC): Preliminary review of EIS; finalize HAPC process.

5. Improved Retention/Improved Utilization (IR/IU): Receive Committee report and finalize alternatives for Amendment A.

6. Steller Sea Lion (SSL): Receive SSL Mitigation Committee report and discuss next steps.

7. Halibut Subsistence: Discuss subsistence regulations (data collection, sale, gear regulations); finalize action on Ninilchik eligibility; discuss petitions from other communities.

8. Groundfish Management: Discuss Aleutian Island pollock fishery management; receive report on F40 recommendations; receive report from non-target species committee; review preliminary Stock Assessment and Fishery Evaluation (SAFE) report; set initial groundfish specifications for 2004; take final action on Total Allowable Catch (TAC)-setting process; review discussion paper on repeal of Vessel Incentive Program (VIP).

9. Crab Management: Review Bering Sea Aleutian Island Crab SAFE report; take final action on Pribilof blue king crab rebuilding plan.

10. Staff Tasking: Receive report from Individual Fishing Quota (IFQ) Implementation and Cost Recovery Committee, and review IFQ proposals received; review tasking and provide direction to staff, and discuss direction to Committees.

11. Other Business.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. C–3 Essential Fish Habitat
2. C–5 Steller Sea Lion
3. D–1(b-f) Groundfish Management
4. D–2 Crab Management

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Enforcement Committee: The Enforcement Committee will meet during each meeting of the Council to discuss enforcement issues or concerns related to any subject on the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

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

[FR Doc. 03–22915 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303C]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will hold a public meeting.

DATES: The meeting will be held on October 9, 2003, at 6 p.m., Ballroom C.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 401 East 6th Avenue, Yukon Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Non-Target Species Committee will hold an organizational meeting to review technical recommendations on management of non-target groundfish species by the ad hoc working group and to identify appropriate alternative management approaches. The proposed terms of reference for this committee include identification of efficient methods for monitoring non-target catch, improving abundance estimates of non-target species, and development of harvest recommendations that build sustainable populations of non-target species. Another meeting of the committee will be scheduled before the end of 2003.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

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

[FR Doc. 03–22917 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303B]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) IFQ Implementation and Cost Recovery Committee will hold a public meeting.

DATES: The meeting will be held on October 5, 2003, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 401 East 6th Avenue, Yukon Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meeting will be held to (1) Review commercial IFQ proposals from 1999 and recent proposals; (2) discuss sale of subsistence halibut.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

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

[FR Doc. 03–22916 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082203C]

Endangered Species; File No. 1420, File No. 1444, and File No. 1447

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of shortnose sturgeon (*Acipenser brevirosturm*) for scientific research:

NMFS has received permit applications from Michael F. Mangold, U.S. Fish and Wildlife Service, Maryland Fisheries Resource Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401(File No. 1444); and the South Carolina Department of Natural Resources (Dr. Mark Collins, Principal Investigator), 217 Fort Johnson Road, Charleston, South Carolina 29412 (File No. 1447). NMFS has received a request to modify a permit application from Douglas Peterson, Ph.D, Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, Georgia 30602 (File No. 1420).

DATES: Written or telefaxed comments must be received on or before October 9, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

For File No. 1444: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

For File No. 1420 and File No. 1447: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Sarah Wilkin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Applications for permits

Mr. Mangold (File No. 1444) seeks authorization to sample and track shortnose sturgeon for two projects: one project would be conducted in the Potomac River and the second would be conducted in the Delaware River, the Chesapeake Bay and its tributaries. For the Potomac River project, up to 50 fish would be taken annually via gill, pound, fyke and trammel netting, measured, weighed, PIT tagged, tissue samples will be taken, and the fish subsequently released. A subset of 20 fish annually would also be T-bar and CART tagged and have a temperature/depth datalogger attached. Additionally, Mr. Mangold would also use D-traps to collect up to 2500 shortnose sturgeon eggs annually. This research would be conducted from 2004–2006. For the second project, Mr. Mangold proposes to capture via gill and trammel net, measure, weigh, tag with PIT and T-bar tags, take a tissue and blood sample of, biopsy gonads of and release 50 fish annually. A subset of 10 fish annually would also have sonic transmitters attached before release and subsequently tracked. This project would be conducted from 2004–2009. A total of 5 incidental mortalities between both projects is requested.

The South Carolina Department of Natural Resources (File No. 1447) seeks authorization to sample and track shortnose sturgeon, in South Carolina coastal waters. Annually, up to 100 fish would be taken via gill nets and trawls, measured, weighed, PIT tagged, and the fish subsequently released. A subset of

50 fish annually would also have Dart tags attached, be outfitted with a radio/sonic transmitter and tracked. Additionally, the researchers would also use deployed buffer pads that act as egg mats to collect up to 100 shortnose sturgeon eggs annually. This research would be conducted from 2004–2009. A total of 2 incidental mortalities is requested.

Application to modify existing application

A notice of receipt of an application from Dr. Douglas Peterson (File No. 1420) to take shortnose sturgeon, for scientific research was published on March 11, 2003 (68 FR 11533). Dr. Peterson sought authorization to sample and track shortnose sturgeon in the Altamaha River in Georgia for five years. Annually, up to 200 fish were to be taken via gill and trammel netting, measured, weighed, PIT and Carlin tagged, tissue and pectoral fin ray samples taken, and the fish subsequently released. Additionally, up to 10 of the total fish sampled annually were to also receive an internal radio-sonic transmitter. Dr. Peterson also proposed to deploy artificial substrate samplers from February to mid-March to collect up to 100 shortnose sturgeon eggs annually. Dr. Peterson now proposes to increase the number of fish receiving an internal radio-sonic transmitter from 10 individuals to 30.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: September 2, 2003.

Jill Lewandowski,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22919 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073103A]

Marine Mammals; File No. 550–1712

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Bernd Wursig, Ph.D., Professor of Marine Biology, Professor of Wildlife and Fisheries Science, Director, Institute of Marine Life Sciences, Texas A&M University, 4700 Avenue U, Building 303, Galveston, TX 77551 has been issued a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NOAA Fisheries, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 17, 2003, notice was published in the **Federal Register** (68 FR 35859) that a request for a scientific research permit to take bottlenose dolphins had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the authorized research, as stated in the application, is to study the behavioral ecology of bottlenose dolphins in the Gulf of Mexico. Research will occur over a five-year period and focus specifically along the Texas and Louisiana coastlines.

Dated: August 25, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries.

[FR Doc. 03–22918 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Revision of a currently approved collection.

Burden: 29 hours annually.

Number of Respondents: 73 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take approximately 24 minutes (0.4 hours) to submit a Statutory Invention Registration request or petition. This includes time to gather the necessary information, prepare the documents, and submit the completed request.

Needs and Uses: Under 35 U.S.C. 157 and 37 CFR 1.293–1.297, the USPTO is authorized to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, provided the applicant meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication, and other processing fees. This collection includes information needed by the USPTO to review and approve or deny such requests. The applicant may also petition the USPTO to review final refusal to publish or to withdraw a request to publish a statutory invention registration. The USPTO is submitting this collection in support of a proposed rulemaking "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would support the use of electronic signatures on documents and increase the filing fees for the petitions that are included in this collection.

Affected Public: Individuals or households, business or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22878 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Secrecy and License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Revision of a currently approved collection.

Burden: 1,524 hours annually.

Number of Respondents: 2,195 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate petition, and submit the completed request.

Needs and Uses: This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR 5.1–5.33. In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications in foreign countries. When disclosure of an invention is determined to be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. The USPTO is submitting this collection in support of a proposed rulemaking "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would support the use of electronic signatures on documents and increase the filing fees for petitions related to foreign licenses. The Petition for Changing the Scope of a License is also being added to this collection, but no forms are provided for this petition.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and State, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22879 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Post Allowance and Refiling.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56/57/58 and PTOL–85B.

Agency Approval Number: 0651–0033.

Type of Request: Revision of a currently approved collection.

Burden: 63,635 hours annually.

Number of Respondents: 205,385 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the forms, and submit the completed request.

Needs and Uses: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. The USPTO can also correct errors in patents, reissue patents as appropriate, and participate in reexamination proceedings initiated by the patent owner or by third parties. The public uses the information in this collection to request corrections in issued patents, to request reissue patents, to request reexamination proceedings, and to ensure that the necessary information and fees are submitted to the USPTO. The USPTO in turn reissues patents, determines whether the requested corrections can be made, and approves reexaminations. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would allow the use of electronic signatures on documents and also eliminate the requirement to surrender a copy of the original patent in a reissue application. With the elimination of this requirement, the associated Form PTO/SB/55 is also being deleted.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22880 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01/01A/02A/02B/02LR/03/03A/04/05/06/07/13PCT/16/17/18/19/29/29A/101 through 110/Electronic New Utility and Provisional Application Forms.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 4,171,568 hours annually.

Number of Respondents: 454,287 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes between 24 minutes to 10 hours and 45 minutes to gather the information, prepare, and submit the various paper and electronic applications in this collection, depending on the situation and the amount of information that needs to be submitted. Based on estimates of similar petitions, the USPTO believes that it takes 1 hour to gather the information, prepare, and submit the petitions to accept an unintentionally delayed priority claim and to accept non-signing inventors or legal representatives/filing by other than all the inventors or a person not the inventor. The USPTO estimates that it takes 22 minutes to copy an oversized new original utility or provisional application that cannot be submitted electronically through EFS onto a CD–ROM, print the application transmittal, and prepare the cover letter submitting the submission.

Needs and Uses: The USPTO is submitting this information collection in support of a notice of proposed rulemaking, "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64) which will be forwarded to the **Federal Register** for publication. This proposed rule increases the filing fee for the Petition to Accept Non-Signing Inventors or Legal Representatives/Filing by Other than all the Inventors or a Person not the Inventor from $130 to $200 and adds capital start-up costs for DVD drives, recorders, and media, in addition to DVD and technical drawing software. Capital start-up costs related to the utility, design, and plant drawings have also been added to this collection. The proposed rule does not change the needs and uses currently reported for this collection.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, the Federal Government, and State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22881 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Processing (Updating).

Form Number(s): PTO/SB/08a/08b/21/22/23/24/24A/25/26/27/30/31/32/35/36/37/42/43/61/62/63/64/64a/67/68/91/92/96/97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A, eIDS, EFS form.

Agency Approval Number: 0651–0031.

Type of Request: Extension of a currently approved collection.

Burden: 2,724,329 hours annually.

Number of Respondents: 2,215,789 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take anywhere from one hour to four hours, depending on the amount of information that the applicant needs to submit to the USPTO, to complete the requirements associated with this information collection. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: During the pendency of a patent application or the period of enforceability of a patent, situations arise that require collection of information for the USPTO to further process the patented file or the patent application. This information can be used by the USPTO to continue the processing of the patent or application or to ensure that applicants are complying with the patent regulations. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO's 21st Century Plan" (RIN

0651-AB64) that would allow the use of electronic signatures on documents, require photographs of any exhibit so that the exhibit can be included in the file, and also allow the USPTO to adjust the fees for many petitions in order to more accurately reflect the actual cost to the USPTO of processing these petitions, among other things.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22882 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Term Extension.

Form Number(s): No forms associated.

Agency Approval Number: 0651–0020.

Type of Request: Revision of a currently approved collection.

Burden: 30,905 hours annually.

Number of Respondents: 26,859 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 1 to 25 hours, depending upon the complexity of the situation. It is estimated that the time needed to complete the applications, petitions, declarations, and requests associated with the patent term and interim extensions ranges from 1 to 25 hours. This time range also includes the Petition to Accord a Filing Date to an Application under 1.740 for Extension of a Patent Term, which the USPTO estimates will take 2 hours to complete. This includes the time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: The USPTO is submitting this information collection in support of the notice of proposed rulemaking, "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64), which the USPTO will forward to the **Federal Register** for publication. This proposed rule increases the filing fee from $130 to $400 for the Petition to Accord a Filing Date to an Application under 1.740 for Extension of a Patent Term and adds this petition into the collection. This petition is used by the public to request review of a notice of an incomplete application for extension of a patent term and to request a filing date. The USPTO uses this information to determine the filing date for the application for extension of a patent term.

The United States Patent and Trademark Office (USPTO), together with the Secretary of Health and Human Services and the Department of Agriculture, administers the Federal Food, Drug and Cosmetic Act, 35 U.S.C. 156. This Act permits the USPTO to restore the patent term lost due to certain types of regulatory review by the Federal Food and Drug Administration or the Department of Agriculture. Only patents for drug products, medical devices, food additives, and color additives are eligible for extension. The maximum length that a patent may be extended (the maximum of patent term that may be restored) is five years.

Under 35 U.S.C. 156, the USPTO extends the term of various patents past their original expiration dates, grants interim extensions, reviews applications for patent term extension and final eligibility decisions, obtains additional information from the public that might influence the extension of the patent term, and withdraws applications for patent term extensions. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.705–1.791, which permits the public to submit applications to the USPTO to extend the patent term past its original expiration date; to petition for reviews of informal extensions of applications, final eligibility decisions, and interim extensions; and to withdraw an application requesting a patent term extension after it is submitted.

Use of the USPTO's information allows the Director of the USPTO, the Secretary of Health and Human Services, and the Secretary of Agriculture to access the information required to determine whether the applicant is eligible for a patent term extension or reconsideration of patent term adjustment determination and, if so, the period of the extension or adjustment.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; farms; the Federal Government; and State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22883 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has

submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 30,735 hours annually.

Number of Respondents: 348,140 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Needs and Uses: In order to keep utility patents in force, patentees must pay maintenance fees at 3½, 7½, and 11½ years after the date of grant. The public uses this collection to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, to file a petition to request acceptance of a maintenance fee payment that was submitted prior to patent expiration but refused by the USPTO, and to designate or change an address to be used for fee-related correspondence with the USPTO. The USPTO uses the information collected from the public to process and record maintenance fee payments, to consider petitions regarding delayed maintenance fee payments or payments that were refused by the USPTO, and to send fee-related correspondence to the correct address. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651-AB64), which would support the use of electronic signatures on documents and increase the filing fees for two petitions under this collection. The Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e)) is being added to this collection, but no forms are provided for this petition.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, and the Federal Government.

Frequency: On occasion and 3 times at 4-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22884 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57406, published on September 10, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 3, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 9, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Sublevels within the aggregate	
338/339/638/639	3,102,315 dozen.
361	2,123,597 numbers.
363	46,938,492 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22791 Filed 9–8–03; 8:45 a.m.

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0004]

Blue Coral-Slick-50, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Blue Coral-Slick-50, Inc., containing a civil penalty of $150,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 24, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 3, 2003.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. Blue Coral-Slick 50, Inc. (hereinafter, "Blue Coral" or "Respondent"), enters into this Settlement Agreement and Order (hereinafter, "Settlement Agreement" or "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the attached Order incorporated by reference herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Blue Coral knowingly failed to comply with section 3 of the Poison Prevention Packaging Act (PPPA) and violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1278, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–76.

3. Blue Coral is a corporation, organized and existing under the laws of the State of Delaware, with its principal office located at 700 Milam Street, Houston, Texas.

Staff Allegations

4. On numerous occasions between September 1998 and August 2001, Blue Coral introduced or caused the introduction into interstate commerce; and received in interestate commerce and delivered or proffered delivery thereof for pay or otherwise, approximately 1 million Rain-X® brand products containing 6% methanol in non-child resistant containers. These products are described as follows: Rain-X® Super Glass Cleaner Concentrate in 10 oz and 16.9 oz bottles; Rain-X® Washer Fluid Concentrate in 10 oz, 16.9 oz, and 1.2 oz pouches; and Rain-X® Washer Fluid Additive in 2 oz pouches.

5. The products identified in paragraph 4 above failed to comply with the Commission's Poison Prevention Packaging Regulation which requires that household substances in liquid form containing 4 percent or more of methanol must be packaged in child resistant packaging. *See* 16 CFR 1700.14(A)(8).

6. The subject products are misbranded hazardous substances pursuant to section 2(p) of the FHSA, 15 U.S.C. 1261.

7. These misbranded hazardous substances presented in ingesting hazard which could cause blindness, serious illness or death to children.

8. Blue Coral knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous substances, described in paragraph 4 above, as the term knowingly is defined in section 5(c)(5) of the FHSA, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c) and is subject to civil penalties under section 5(c)(1) of the FHSA.

Response of Blue Coral

9. Blue Coral denies the staff allegations in paragraph 4 through 8, above. Blue Coral denies that it violated the FHSA, the PPPA or any other law, regulation or other requirement.

10. Blue Coral states that it notified the Commission and undertook a voluntary recall in this matter, in cooperation with the Commission, promptly upon learning of the alleged failures described in paragraph 4–8, and took action to ensure that the products are packaged in accordance with the PPPA.

Agreement of the Parties

11. The Consumer Product Safety Commission has jurisdiction over Blue Coral and the subject matter of this Settlement Agreement and Order under the FHSA, 15 U.S.C. 1261–1278.

12. This Agreement is entered into for settlement purposes only and does not constitute an admission by Blue Coral or a determination by the Commission that Blue Coral knowingly violated the FHSA or the PPPA.

13. Blue Coral agrees to pay to the U.S. Treasury a civil penalty in the amount of one hundred fifty thousand and 00/100 dollars ($150,000.00), in full settlement of this matter, payable within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order.

14. Blue Coral knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter; (ii) to an administrative or judicial hearing with respect to the staff allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination by the Commission as to whether a violation has occurred with respect to Section 4 of the FHSA, 15 U.S.C. 1263; (v) to a statement of findings of fact and conclusions of law with regard to the staff allegations; and (vi) to any claims under the Equal Access to Justice Act.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed in the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20. If the Commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

16. The Settlement Agreement and Order shall become effective upon its final acceptance by the Commission and service of the final Order upon Blue Coral.

17. Upon provisional acceptance by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

18. Blue Coral agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

19. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Blue Coral determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

20. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

21. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

22. The provisions of this Agreement and Order shall apply to, and inure to the benefit of, Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other business entity, or through any agency, device or instrumentality.

Dated: August 5, 2003.

Blue Coral-Slick 50, Inc.

Duncan J. Palmer,
Vice President and Chief Financial Officer.

Eric A. Rubel,
Respondent's Attorney.

The Consumer Product Safety Commission.

Alan H. Schoem,
Director, Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: August 26, 2003.

Belinda V. Bell,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Blue Coral-Slick 50 Inc., a corporation, and the staff of the Consumer Products Safety Commission, and the Commission having jurisdiction over the subject matter and over Blue Coral, and it appearing that the Settlement Agreement is in the public interest, it is Ordered that the Settlement Agreement be, and hereby is, accepted and it is Further Ordered that Blue-Coral Slick 50 Inc. shall pay the United States Treasury a civil penalty in the amount of one hundred fifty thousand and 00/100 dollars, ($150,000.00), payable within twenty (20) days of the service of the Final Order upon Blue Coral-Slick 50.

Provisionally accepted and Provisional Order issued on the 3rd day of September, 2003.

By Order of the Commission:

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–22962 Filed 9–8–03; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 10, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), ODUSD (PI)/Defense Human Resources Activity, ATTN: Ms. Heidi Boyd, 4040 Fairfax Boulevard, Suite 200, Arlington VA 22203.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 696–0404.

Title, Associated Form and OMB Control Number: Application for Department of Defense Common Access Card—DEERS Enrollment, DD Form 1172–2 OMB Number 0704–0415.

Needs and Uses: This information collection requirement is needed to obtain the necessary data to establish eligibility for the DoD Common Access Card for those individuals not pre-enrolled in the DEERS, and to maintain a centralized database of eligible individuals. This information is used to establish eligibility for the DoD Common Access Card for individuals either employed by or associated with the Department of Defense; is used to control access to DoD facilities and systems; and it provides a source of data for demographic reports and mobilization dependent support.

Affected Public: Individuals or households.

Annual Burden Hours: 100,000.

Number of Respondents: 300,000.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occassion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collected

The Department of Defense, over the past three years, has been taking requisite measures to enhance physical and information security and applying prudent countermeasures for all potential vulnerabilities focusing on security actions to address the changes in today's threat environment. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence (C3I) August 12, 2000 memorandum, Subject: Department of Defense (DoD) Public Key Infrastructure (PKI), directed use of a common, integrated, interoperable DoD PKI to enable security services at multiple levels of assurance. PKI is a key and certificate management infrastructure designed to support confidentiality, integrity, availability, authorization, and access control in computer networks. It is imperative to the security of the nation's defense that the systems of the Department of Defense be PKI-enabled as soon as possible. This data collection is essential to the effort to prohibit access to the Departments' systems to those not authorized. Public Law 106–65, Section 373 directed the Department to develop and implement a Smart Card

program for the DoD. The Deputy Secretary of Defense November 10, 1999 memorandum, Subject: Smart Card Adoption and Implementation, directed the Department to implement smart card technology as a Department-wide Common Access Card (CAC) that shall be the standard ID card for active duty Uniformed Services personnel (to include the Selected Reserve), DoD civilian employees, and eligible contractor personnel. The CAC will be the principal card used to (1) enable physical access to buildings and controlled spaces and (2) gain access to the Department's computer networks and systems. Further guidance was provided in the USD (Personnel and Readiness) and DoD CIO April 18, 2002 joint memorandum to allow non-DoD federal employees requiring logical access to become eligible for the CAC. The Deputy Secretary directed the CAC be issued and maintained using the infrastructure provided by the Defense Enrollment Eligibility Reporting System (DEERS) and the Realtime Automated Personnel Identification System (RAPIDS). Initial implementation of the CAC began December 2000 and mass issuance is scheduled to be complete by April 2004.

This information collection is required to obtain the necessary data to establish eligibility for the CAC for those individuals not pre-enrolled in the DEERS, and to maintain a centralized database of eligible individuals.

Dated: September 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22900 Filed 9–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Military Cancer Institute

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: United States Military Cancer Institute.

TIME AND DATE: 8:30 a.m. to 3 p.m., November 12, 2003.

PLACE: Eisenhower Suite, WRAMC, 6900 Georgia Ave, NW., Washington DC 20307.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: USMCI goals and objectives.

8:30 a.m. Meeting—Committee of Scientific Advisors
(1) Welcome
(2) Introduction
(3) Overview of Various Oncology Programs
(4) Committee and Director Executive Session

FOR FURTHER INFORMATION CONTACT: Mr. William Mahr, Associate Director for Administration—USMCI, (202) 782–0552.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–23094 Filed 9–5–03; 3:19 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

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), Savannah River. 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: Monday, September 22, 2003, 12:15 p.m.–5:15 p.m.; Tuesday, September 23, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: Houndslake, 1900 Houndslake Drive, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: deLisa Bratcher, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–8607.

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

Monday, September 22, 2003

12:15 p.m.—Executive Committee Meeting
1 p.m.—Combined Committee Session
5:15 p.m.—Adjourn

Tuesday, September 23, 2003

8:30–9:30 a.m.—Approval of Minutes; Agency Updates; Public Comment Session; Chair and Facilitator Update
9:30–10:15 a.m.—Nuclear Materials Committee Report
10:15–11 a.m.—Waste Management Committee Report
11–12 noon —Facilities Disposition & Site Remediation Committee Report
12 noon—Lunch Break
1–3:30 p.m.—Strategic & Legacy Management Committee Report
3:30–3:45 p.m.—Administrative Committee Report
3:45–4 p.m.—Public Comments
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, September 22, 2003.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral state-ments pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

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 through Friday, except Federal holidays. Minutes will also be available by writing to deLisa Bratcher, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–8607.

Issued at Washington, DC, on September 3, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–22902 Filed 9–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Chairs Meeting

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), Chairs Meeting. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires

that public notice of these meeting be announced in the **Federal Register.**

DATES: September 26–27, 2003.

ADDRESSES: Courtyard Marriott, 3835 Technology Drive, Paducah, KY 42001.

FOR FURTHER INFORMATION CONTACT: Dianna Feireisel, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, 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, waste management, and related activities.

Tentative Agenda

Friday, September 26, 2003
8 a.m.—Registration
8:30 a.m.—Opening Business
- Welcoming Remarks
- Introductions
- Meeting Ground Rules and Agenda Review
- Meeting Objectives and Expectations

9 a.m.—Roundtable presentations focusing on each Board's contribution to its specific site (5 minutes per site)
- Direct effect on cleanup projects (improved priorities, accelerated schedules, reduced cost, enhanced community support, *etc.*)
- Recommendations to DOE and responses
- Overall value
- Roundtable presentations focusing on assessment of semi-annual chairs meetings (5 minutes per site)
- Perceived purpose
- Value to specific sites
- Value to overall complex

10:30 a.m.—Break
10:45 a.m.—Chairs Summary of self-assessment at both local level and national level
- How the work of the CABs, at their individual sites and meeting collectively, have contributed to the mission
- Appropriate criteria for measuring the extent of board effectiveness

11:45 a.m.—Lunch
1 p.m.—DOE Presentations and Discussion
- FY 04 Budget
- Guidance for Site Development of End-State Vision documents
- EM Corporate Strategy
- Response to Recommendations (disposition planning and TRU Waste Workshop)

3 p.m.—Break
3:15 p.m.—Public Comment Period
4 p.m.—Day 1 Wrap-Up and Review of Day 2
4:15 p.m.—Meeting Adjourns

Saturday, September 27, 2003
8:30 a.m.—Review Agenda
8:35 a.m.—Assessment of Workshop (value/contributions)
- Presentation from each host site (5 minutes each)
- Individual site perspectives (5 minutes per site)

Key Questions:
- Intended purpose of workshops
- Who are they aimed at?
- What is their actual value and for whom?
- What has changed, improved because of any workshop?
- If workshops have value, are SSABs the appropriate sponsor?

10 a.m.—Break
10:15 a.m.—Continuation of Discussion
11 a.m.—Next steps for workshops and Chairs meeting
11:30 a.m.—Public Comment Period
11:45 a.m.—Meeting Wrap-Up
- Review of Expectations/Objectives
- Meeting Evaluation

12 noon—Meeting Adjourns

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 David Dollins 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 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 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 or calling David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or phone (270) 441–6819.

Issued at Washington, DC, on September 3, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–22903 Filed 9–8–03; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ENERGY REGULATORY COMMMISSION

[IC03–592–000 FERC Form No. 592]

Commission Collection Activities, Proposed Collection; Comment Request; Extension

September 2, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 31, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–592–000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will end an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

The information collected under the requirements of FERC Form No. 592, "Marketing Affiliates of Interstate Pipelines" (OMB No. 1902–0157) is used by the Commission to implement the statutory provisions of Sections 4, 5, 7, 8, 10, 14, 16 and 20 of the Natural Gas

Act (NPA), 15 U.S.C. 717–717w and Title II, Section 311 and Sections 501 and 504 of the Natural Gas Policy Act (Pub. L. 95–621)

The information under FERC Form 592 applies only to those major natural gas pipelines involved in transactions with affiliated marketing or brokering companies. In Order No. 497, 53 FR 22161, June 14, 1988, the Commission addressed possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering entity. The rule established standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. In Order No. 637, 65 FR 10219, February 25, 2000, the Commission in response to growing competition in the natural gas marketplace and to further ensure that it could monitor transactions for the exercise of marketpower revised its reporting requirements. These provisions have improved the availability and usefulness of the information reported. Under these revisions, periodic reporting to the Commission was reduced and instead a greater reliance was placed on Internet posting and information maintenance. Specifically with regard to interstate pipelines and their affiliates, respondents have to post the list of names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate plus organizational charts and job descriptions were also to be posted with specified information. Respondents also have to file with the Commission a set of procedures to show compliance with the Commission's standards of conduct; maintain books of accounts and records separate from those of its affiliate; contemporaneously inform all potential shippers of information provided to marketing affiliates about the transportation of natural gas; maintain a log of waivers that the pipeline grants with respect to tariff provisions that provide for discretionary waivers and make the log available within a 24-hour period from when a request is made; and contemporaneously provide to similarly situated non-affiliated shippers the same transportation discount that it made to an affiliated marketer.

The information maintained and provided by respondents is used by the Commission to monitor pipelines' transportation and sales activities for their marketing affiliates to deter undue discrimination by pipeline companies in favor of their marketing affiliates. These reporting requirements act to deter undue discrimination and preference, and permit the market to monitor and self-police affiliate transactions. The information is also used by nonaffiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for formal proceedings following the filing of a complaint. The Commission implements these filings requirements in the Code of Federal Regulations (CFR) under 18 CFR section 161.3 and section 250.16.

Action: The Commission is requesting a three-year extension without any changes to the Reporting requirements.

Burden Statement: Public reporting burden for this information collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden (number of hours per response) (3)	Total annual burden (total number of hours) (1)×(2)×(3)
74	2	29.8*	4,409

*Rounded off.

Estimated cost to respondents: 4,409 hours ÷ 2,080 per year x $117,041 = $248,093. The cost per respondent = $3,353. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collection, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22852 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–344–000]

Columbia Gas Transmission Corporation; Notice of Application

September 3, 2003.

Take notice that Columbia Gas Transmission Corporation (Columbia), filed on July 30, 2003, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, to abandon its storage injection/withdrawal Well 12028 and associated well line segment SR-W12028 consisting of 0.17 mile of 3-inch and 4-inch pipeline and to construct new injection Well 12422 and

appurtenances including 0.03 mile of 4-inch well line, all located in Columbia's Crawford Storage Field in Hocking County, Ohio, all as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing may be also viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Esquire, Attorney for Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359, fax (304) 357–3206.

Columbia states that Well 12028 is experiencing the flooding of salt water into the storage zone reservoir and believes that the abandonment of the well and the construction of a replacement well, Well 12422, will protect the integrity of the reservoir, as well as allow Columbia to continue to meet the deliverability and turnover requirements of the Crawford Storage Field.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of ll documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests, comments, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22868 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–243–003]

Nicole Gas Production Ltd.; Notice of Compliance Filing

September 3, 2003.

Take notice that on August 26, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 410, with a proposed effective date of August 15, 2003.

Columbia Gas states that on July 14, 2003, it filed revised tariff sheets to clarify obligations with respect to the construction and installation of meters and measuring stations and to clarify obligations with respect to the responsibility for payment of the cost of the construction and installation of those facilities. On August 11, 2003, the Commission accepted Columbia Gas' proposed revised tariff sheets subject to conditions (August 11 Order), Nicole Gas Production Ltd., 104 FERC ¶ 61,193 (2003). The Commission required that Columbia Gas make revisions to a tariff sheet within 15 days of the date of issuance of the August 11 Order. As directed by the Commission in the August 11 Order, Columbia Gas submitted the revised tariff sheet identified above. Columbia states that the revised tariff sheet reflects the changes required by the Commission in the August 11 Order.

Columbia Gas states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22866 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–49–003]

Northwest Pipeline Corporation; Notice of Amendment

September 3, 2003.

Take notice that on August 22, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP01–49–003, an amendment to the pending application filed June 25, 2003, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity that was issued for its "Everett Delta Lateral Project" project by Commission order dated October 25, 2001 in Docket Nos. CP01–49–000 and CP01–49–001 and to request related permission and approval for pre-granted abandonment, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest states that by this amendment to the pending amended application, Northwest requests that the Commission approve the Holly Lane Reroute between mileposts 1.16 and 1.78 in Snohomish County, Washington of the proposed Everett Delta Lateral in lieu of the originally proposed crossing of Catherine Creek by horizontal directional drill between mileposts 1.2 and 1.52.

Any questions concerning this amendment may be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline corporation, P. O. Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22864 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–005]

SCG Pipeline, Inc.; Notice of Amendment

September 3, 2003.

Take notice that on August 26, 2003, SCG Pipeline, Inc. (SCG), P.O. Box 102407, Columbia, South Carolina 29224–2407, filed in Docket No. CP02–57–005, an amendment to its certificate application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity issued to SCG on September 20, 2002, approving construction of its proposed facilities, including the Port Wentworth Meter Station, located in Chatham County, Georgia, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

SCG states that the purpose of this amendment is to request a change in the ownership percentage of the Port Wentworth meter and regulating station to reflect the fact that this meter station is now jointly owned with Southern Natural Gas Company (Southern Natural). As a result of this joint ownership, SCG states that it will have a sixty-one and one-tenth percent (61.1%) ownership interest in the Port Wentworth Meter Station, with Southern Natural owning the remaining thirty-eight and nine-tenths percent (38.9%) ownership interest in the meter station. SCG states that Southern Natural has already filed to amend its certificate in Docket No. CP02–1–000 to reflect this amended ownership in the Port Wentworth Meter Station and this amendment was approved by the Commission on February 28, 2003.

Any questions concerning this amendment may be directed to Troy Blalock, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South Carolina 29223, at (803) 217–1811, or fax (803) 217–2104.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will

receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22867 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–349–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

September 3, 2003.

Take notice that on August 26, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP03–349–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon compression facilities in Johnson County, Missouri, all as more set forth in the application which is on file with the Commission and open to public inspection

Southern Star proposes to abandon five 170 horsepower compressor units and appurtenant facilities, auxiliary equipment at the Knob Noster compressor station in Johnson County. It is stated that the compressor station was constructed in 1949 and utilized to compress gas into the Carrollton/Marshall 8-inch system. It is stated that the facilities are now obsolete due to piping constraints and that the compression is insufficient reliably meet volume demand during peak periods. It is explained that the facilities are no longer needed because the newer, more efficient 800 horsepower unit at the Concordia compressor station now serves the Carrollton/Marshall system and provides adequate compression during peak periods. Southern Star proposes to abandon the facilities by reclaim with the exception of an equipment storage warehouse which would continue to be used. It is asserted that Southern Star would continue to own and operate the property that the compressor station proposed for abandonment stands on.

Any questions concerning this application may be directed to David N. Roberts, Manager, Regulatory Affairs, at (270)852–4654.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Comment Date: September 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22865 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3760–009, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Filings

August 29, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. California Independent System, Operator Corporation, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

[Docket Nos. ER98–3760–009, EC96–19–060 and ER96–1663–063]

Take notice that on August 25, 2003, the California Independent System Operator Corporation (ISO), submitted a filing in compliance with the Commission's July 25, 2003 Order in Docket No. ER98–3760–008, *et al.*, 104 FERC ¶ 61,129.

The ISO states that this filing has been served upon all parties in the captioned proceeding, and has been posted on the ISO Home Page.

Comment Date: September 15, 2003.

2. Ameren Services Company

[Docket Nos. ER02–2233–010 and EC03–14–005]

Take notice that on August 28, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (jointly, the Applicants) filed two Acknowledgements in order to make it possible for GridAmerica to commence operations, if necessary, on a phased basis.

The Applicants state that in addition to serving the filing in accordance with the Commission's Regulations, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: September 8, 2003.

3. Power Contract Financing II, L.L.C.

[Docket No. ER03–1108–001]

Take notice that on August 26, 2003, Power Contract Financing II, L.L.C. (PCF II), filed an amendment to it application filed July 23, 2003. PCF II states that the amendment corrects a typographical error in the original filing.

Comment Date: September 16, 2003.

4. Power Contract Financing II, Inc.

[Docket No. ER03–1109–001]

Take notice that on August 26, 2003, Power Contract Financing II, Inc. (PCF II, Inc.) filed an amendment to its application filed on July 23, 2003. PCF II, Inc. states that the amendment corrects a typographical error in the original filing.

Comment Date: September 16, 2003.

5. Rail Energy of Montana

[Docket No. ER03–1224–000]

Take notice that on August 18, 2003, Rail Energy of Montana, LLC, tendered for filing a Notice of Cancellation of its Market-based Rate Authority in Docket No. ER01–1557–000. Rail Energy of Montana, LLC is requesting an effective date of June 30, 2001.

Comment Date: September 12, 2003.

6. Wisconsin Electric Power Company

[Docket No. ER03–1240–001]

Take notice that on August 26, 2003, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a correction to its filing of August 22, 2003 in Docket No. ER03–1240–000 submitting a revised Power Service Agreement between Wisconsin Electric and the City of Crystal Falls, Michigan. Wisconsin Electric states that this filing is to correct two errors in the transmittal letter filed on August 22, 2003. Wisconsin Electric further states that the remainder of the information contained in the August 22 filing is correct.

Comment Date: September 16, 2003.

7. Northeast Utilities Service Company

[Docket No. ER03–1247–000]

Take notice that on August 26, 2003, Northeast Utilities Service Company (NUSCO) filed on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company, Holyoke Water Power Company and Public Service Company of New Hampshire (collectively, the NU Companies) and North Atlantic Energy Corporation, Open Access Transmission Tariff, FERC Electric Tariff No. 10 (Tariff No. 10). NUSCO states that Tariff No. 10 reflects revised transmission service rates for open access transmission service over the NU Operating Companies' transmission facilities and is intended to supersede the existing Open Access Transmission Tariff, FERC Electric Tariff No. 9.

NUSCO requests an effective date of October 27, 2003 for Tariff No. 10. NUSCO states that copies of this filing have been served on all of the NU Operating Companies' transmission customers and to the Connecticut, Massachusetts and New Hampshire state public utility commissions.

Comment Date: September 16, 2003.

8. Puget Sound Energy, Inc.

[Docket No. ER03–1248–000]

Take notice that on August 26, 2003, Puget Sound Energy, Inc. (Puget) submitted for filing the 2003–04 Operating Procedures with respect to the 1997 Pacific Northwest Coordination Agreement (the 1997 PNCA). Puget states that the 2003–04 Operating Procedures amend the 1997 PNCA.

Puget further states that copies of the filing were served on the parties to the 1997 PNCA.

Comment Date: September 16, 2003.

9. Ameren Services Company

[Docket No. ER03–1249–000]

Take notice that on August 26, 2003, Ameren Services Company (ASC) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between ASC and Constellation NewEnergy Corporation (Customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the Customer pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: September 16, 2003.

10. Maine Public Service Company

[Docket No. ER03–1250–000]

Take notice that on August 25, 2003, Maine Public Service Company (MPS) submitted for filing an executed Interconnection Agreement Between MPS and PDI New England, Inc. (now known as WPS New England Generation, Inc.). MPS requests an effective date of June 8, 1999, the date on which the agreement was executed.

Comment Date: September 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22870 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–97–000, et al.]

Meiya Qujing Power Company Limited., et al.; Electric Rate and Corporate Filings

September 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Meiya Qujing Power Company Limited

[Docket No. EG03–97–000]

Take notice that on August 27, 2003, Meiya Qujing Power Company Limited (MQP), with its principal office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, 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.

MQP states it is a company organized under the laws of Cayman Islands. MQP also states that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (APUHCA@), exclusively in owning, operating, or both owning and operating, a coal-fired electric generating facility with a total output of approximately 600 megawatts consisting of two steam turbines, two 1,025 ton-per-hour coal-fired boilers and certain additional incidental facilities, located in Qujing, Yunnan province, People's Republic of China. MQP explains it will, through an affiliate, sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: September 23, 2003.

2. Massachusetts Municipal Wholesale Electric Company Complainant, v. Power Authority of the State of New York, Respondent; Power Authority of the State of New York Project No. 2000 (St. Lawrence-FDR)

[Docket No. EL03–224–000]

Take notice that on August 29, 2003, Massachusetts Municipal Wholesale Electric Company (MMWEC), (Complainant), filed a Complaint Requesting Fast Track Processing against the Power Authority of the State of New York (NYPA) pursuant to Sections 206, 207, 306, 307, 20, and 31 of the Federal Power Act and Rules 206, 207, 212 of the Commission's Rules (18 CFR 385.206, 207 and 212). Complainant requests that the Commission take prompt action to extend the current contract between MMWEC and NYPA for power and energy from the St. Lawrence-FDR (Project No. 2000) and the Niagara (Project No. 2216) hydroelectric projects. The current contract, covering sales from both Projects, expires on October 31, 2003. MMWEC states that it is entitled to relief under the Projects' license conditions and pursuant to federal law. Moreover, consumers in Massachusetts will experience irreparable injury, absent an extension of the existing contract. MMWEC further states that its negotiations towards a new replacement contract with NYPA have been fruitless, despite years of effort.

Comment Date: September 17, 2003.

3. Massachusetts Municipal Wholesale Electric Company Complainant, v. Power Authority of the State of New York Respondent; Power Authority of the State of New York, Project No. 2216 (Niagara)

[Docket No. EL03–225–000]

Take notice that on August 29, 2003, Massachusetts Municipal Wholesale Electric Company (MMWEC), (Complainant), filed a Complaint Requesting Fast Track Processing against the Power Authority of the State of New York (NYPA) pursuant to Sections 206, 207, 306, 307, 20, and 31 of the Federal Power Act and Rules 206, 207, 212 of the Commission's Rules (18 CFR 385.206, 207 and 212). Complainant requests that the Commission take prompt action to extend the current contract between MMWEC and NYPA for power and energy from the St. Lawrence-FDR (Project No. 2000) and the Niagara (Project No. 2216) hydroelectric projects. The current contract, covering sales from both Projects, expires on October 31, 2003. MMWEC states that it is entitled to relief under the Projects' license conditions and pursuant to federal law. Moreover, consumers in Massachusetts will experience irreparable injury, absent an extension of the existing contract. MMWEC further states that its negotiations towards a new replacement contract with NYPA have been fruitless, despite years of effort.

Comment Date: September 17, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–5–002]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2002), submitted for filing a second revised Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

Midwest ISO states that a copy of this filing was served on the GM Transmission, LLC and Northern States Power Company d/b/a Xcel Energy.

Comment Date: September 17, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–83–004]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Section 2.6 of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's July 28, 2003 Order on Rehearing, 104 FERC ¶ 61,148 (2003).

The Midwest ISO has requested the original effective date of December 23, 2002. Midwest has also requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: September 17, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–86–005]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Section 41.1 of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in

compliance with the Commission's July 28, 2003 Order on Rehearing, 104 FERC ¶ 61,148 (2003).

The Midwest ISO has requested the original effective date of December 23, 2002. Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: September 17, 2003.

7. PJM Interconnection L.L.C.

[Docket Nos. ER03–194–004 and ER03–309–004]

Take notice that on August 27, 2003, PJM Interconnection, L.L.C. (PJM) submitted a filing to comply with the Ordering Paragraph C of the Commission's Order issued July 29, 2003, 104 FERC ¶ 61,154.

Comment Date: September 17, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–587–001]

Take notice that on August 27, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to the Commission's April 28, 2003 Order in Docket No. ER03–587–000, FERC Rate Schedule 30 between NYSEG and Rochester Gas and Electric Corporation consistent with Order No. 614.

Comment Date: September 17, 2003.

9. Business Discount Plan, Inc.

[Docket No. ER03–1229–000]

Take notice that on August 18, 2003, Business Discount Plan (BDP) filed a Notice of Cancellation of its market-based rate authority. BDP states that it has never used its market-based rate authority and does not plan to do so in the future.

Comment Date: September 12, 2003.

10. Southern Company Services, Inc.

[Docket No. ER03–1252–000]

Take notice that on August 27, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an amendment to the Interchange Contract between Duke Power Company (Duke) and Southern Companies dated December 18, 1991 and designated First Revised Rate Schedule FERC No. 77. SCS states that this revision is made to allow payment for emergency service provided by Southern Companies to Duke under Service Schedule A of that contract to be made pursuant to Southern Companies' market-based rate tariff.

Comment Date: September 17, 2003.

11. Southern California Edison Company

[Docket No. ER03–1253–000]

Take notice that on August 27, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Inland Empire Energy Center, L.L.C (IEEC). SCE states that the purpose of the Letter Agreement is to provide an arrangement pursuant to which SCE will review the California Energy Commission (CEC) Preliminary Staff Assessment (PSA), and later Final Staff Assessment (FSA), of IEEC's application for certification of a 500 kV generation transmission line and associated facilities which would be required to interconnect IEEC's generation project to SCE's electrical system.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and IEEC.

Comment Date: September 17, 2003.

12. Aquila, Inc.

[Docket No. ER03–1254–000]

Take notice that on August 27, 2003, Aquila, Inc. (Aquila), filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C.824d, and part 35 of the Commission's regulations, 18 CFR 35, Amendatory Agreement No. 3 to the Multiple Interconnection & Transmission Contract between Aquila, Inc. d/b/a Aquila Networks—MPS and Kansas City Power & Light Company, designated as Aquila's Rate Schedule FERC No. 20. Aquila states that this amendment clarifies the existing interconnection point at the Duncan Road Substation. Aquila requests that the amendment be made effective August 28, 2003.

Comment Date: September 17, 2003.

13. FirstEnergy Solutions Corp.

[Docket No. ER03–1256–000]

Take notice that on August 27, 2003, FirstEnergy Solutions Corp. (Solutions) tendered for filing a Revised Electric Power Supply Agreement between Solutions, as seller, and The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company, as buyers (the Agreement). Solutions states that the Agreement has been modified to accommodate a change in the identity of the Transmission Provider that will deliver power being sold pursuant to the Agreement and to implement certain ministerial changes. Solutions has asked for waiver of any applicable requirements in order to make the Agreement effective as of October 1, 2003.

Comment Date: September 17, 2003.

14. Tampa Electric Company

[Docket No. ER03–1257–000]

Take notice that on August 27, 2003, Tampa Electric Company (Tampa Electric) tendered for filing the Operating Agreement between Tampa Electric and Florida Power Corporation (FPC) for the Pebbledale-Barcola Interconnection dated August 14, 2003, designated and formatted as a new Tampa Electric rate schedule. Tampa Electric proposes that the new rate schedule be made effective on August 14, 2003.

Tampa Electric states that copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment Date: September 17, 2003.

15. Niagara Mohawk Power Corporation

[Docket No. ER03–1258–000]

Take notice that on August 27, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing a First Revised Service Agreement No. 326 (Service Agreement) between Niagara Mohawk and PSEG Power New York Inc. (PSEG) under the New York Independent System Operator's FERC Electric Tariff, Original Volume No. 1. Niagara Mohawk states that under the Service Agreement, it provides interconnection service to PSEG for the Albany Steam Station generating facility.

Comment Date: September 17, 2003.

16. Kloco Corporation

[Docket No. ER03–1259–000]

Take notice that on August 27, 2003, Kloco Corporation tendered for filing notification that GDK Corporation has changed its name to Kloco Corporation.

Comment Date: September 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22869 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–49–002]

Northwest Pipeline Corporation; Notice of Intent To Prepare a Supplemental Environmental Assessment for the Amended Everett Delta Project and Request for Comments on Environmental Issues

September 3, 2003.

On October 25, 2001, the Commission issued Northwest Pipeline Corporation (Northwest) a certificate of public convenience and necessity for the Everett Delta Lateral Project (Order). We [1] prepared an environmental assessment (EA) and on August 10, 2001, we issued a notice of availability for comment on the EA. Comments received on the EA were addressed in the Order authorizing construction and operation of the Everett Delta Project, subject to Northwest's compliance with the environmental conditions. As currently certificated, the Everett Delta Lateral Project in Snohomish County, Washington,[2] includes approximately 9 miles of 20-inch-diameter lateral pipeline, two delivery stations, and related facilities to provide transportation deliveries from Northwest's mainline to serve a planned Northwest Power Company power plant in Everett, Washington, and to provide additional service to a local distribution company, Puget Sound Energy (PSE). After issuance of the Order for the project, the new power plant that was the anchor market for the project was canceled and the facility agreements underlying this project were terminated. Northwest and PSE then negotiated new commercial arrangements for a revised Everett Delta Lateral Project designed to serve only PSE's distribution system.

Northwest now requests the Commission to amend the certificate for the project to authorize Northwest to construct approximately 9.19 miles of 16-inch-diameter pipeline (on the certificated route with some variations), instead of 20-inch-diameter pipeline, one meter station, two delivery taps and related facilities designed to provide approximately 113 million decatherms per day of firm transportation service for PSE. The facility differences in the amendment versus the certificated project are: smaller diameter pipeline; 0.19 miles longer pipeline; one less meter station; and small changes to related facilities. We will study the amendments and determine if they are environmentally preferred over the certificated route.

The primary route change involves the certificated route crossing of Catherine Creek by horizontal directional drill (HDD) between mileposts (MPs) 1.2 and 1.52. Geotechnical investigations and site analysis subsequent to the Order have determined that the route through this area has less than a 25 percent probability of success, due to the amount of subsurface gravels and cobbles that would be encountered along the path of the HDD. Northwest has identified a route that would avoid the use of the Catherine Creek HDD—designated the Holly Lane Reroute. The reroute affects the proposed alignment between MPs 1.16 and 1.78 and crosses Catherine Creek at MP 1.32 where a culvert has already been installed. The majority of the reroute would be within the right-of-way of Callow Road and Holly Lane.

This Notice of Intent is to inform the public that staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a supplemental EA that will discuss the environmental impacts of the Everett Delta Lateral involving construction and operation of facilities by Northwest in Snohomish County, Washington. The EA will focus on the amendments to determine if they affect our original conclusion that the project does not constitute a major Federal action significantly affecting the quality of the human environment. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Northwest provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project as Amended

Northwest proposes to construct:

- Approximately 9.19 miles of 16-inch-diameter pipeline in Snohomish County, Washington, which would tie-in with Northwest's existing mainline and mainline loop at milepost (MP) 1411.3 north of the City of Lake Stevens. The 16-inch-diameter lateral would extend from the interconnect with Northwest's existing system at MP 0.0 and extend to PSE in Everett, Washington;

[1] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[2] (Northwest's) application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

- The Everett Delta Meter Station (MP 0.0);
- Two downstream delivery taps: the Soper Hill Tap (MP 4.4) and the Everett Tap (MP 9.19); and
- A pig launcher and two 12-inch mainline taps (MP 0.0), block valve assembly (MP 4.4), and a pig receiver (MP 9.19).

The general location of the project facilities is shown in appendix 1.[3] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 3.

Land Requirements for Construction

In total, construction of the project would result in approximately 89 acres of disturbance. Permanent easement for the entire project would result in approximately 50 acres with the remaining 39 acres of land allowed to revert to its former use. A permanent easement is needed for long-term operation and maintenance requirements. Northwest would require a 50-foot-wide permanent easement for the project. The aboveground facilities would need a total of 0.95 acre. The amendments cause an increase in land use of 1.29 acres for construction (temporary) and 0.35 acre for operation (permanent easement) Construction of the lateral would primarily use a 75-foot-wide construction right-of-way. However, a number of areas would require the construction right-of-way to be reduced to less than 75 feet in width. In addition to the typical 75-foot-wide construction right-of-way, additional temporary extra work areas at specific locations such as road and railroad crossings, and waterbody and wetland crossings are required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed changes in the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission=s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

The environmental issues for the certificated route were addressed in the August 10, 2001 EA. We have identified several additional issues that we think deserve attention based on a preliminary review of the amended facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would be within 50 feet of 4 additional residences; and
- The crossing of Catherine Creek in the new proposed location.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the change to the original proposal, alternatives to the proposal (including alternative routes), measures to avoid or lessen environmental impact, and how you believe these changes affect the original analysis. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP01–49–002.
- Mail your comments so that they will be received in Washington, DC on or before October 3, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary "link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/*esubscribenow.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22863 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Fifth Workshop; Better Stakeholder Involvement: Lessons Learned from Implementing the Commission's National Environmental Policy Act Pre-Filing Process

September 2, 2003.

The Office of Energy Projects will host the fifth workshop in its "Better Stakeholder Involvement Series." This workshop will focus on "lessons learned" from a project where the Commission's National Environmental Policy Act (NEPA) Pre-Filing Process was implemented.[1] It will be held in Roanoke, Virginia, on Thursday, October 2, 2003. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations to participate.

We will learn from stakeholder and industry experiences with projects, solicit ideas for enhancing communication, and discuss the development of a new brochure to help stakeholders effectively participate in the NEPA Pre-Filing Process.

We will specifically discuss the *facility planning process,* but not the merits of any specific proposed or existing pipeline projects. Participants are asked to speak from experience and be constructive, and bear in mind that the focus of the workshop is on discussing and improving the process of communication between the industry, the stakeholders, and the Federal Energy Regulatory Commission *before* the filing of an application.

The workshop will be held at the Holiday Inn-Tanglewood, 4468 Starkey Road, from 9 a.m. to 4 p.m. The phone number at the hotel is 1–888–228–5040. A preliminary agenda and directions and map to the hotel are enclosed. You may also go to the hotel's Web site for more detailed information and driving directions at *http://www.ichotels.com*, then click "Holiday Inn", and type in "Roanoke, VA."

[1] Information on the Commission's NEPA Pre-Filing Process can be downloaded from our Web site at *http://www.ferc.gov* or requested by e-mail at: *gasoutreach@ferc.gov*.

If you plan to attend or have suggestions for the agenda, please respond by Monday, September 29, 2003 via facsimile to Roberta Coulter at 202–208–0353, or you may e-mail our team at: *gasoutreach@ferc.gov*. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann 202–502–8066.
Lauren O'Donnell 202–502–8325.
Alisa Lykens 202–502–8766.
Howard Wheeler 202–502–8688.

J. Mark Robinson,

Director, Office of Energy Projects.

Agenda

Better Stakeholder Involvement: Lessons Learned from Implementing the Commission's NEPA Pre-filing Process

Roanoke Workshop—October 2, 2003

9 a.m.—Welcome, Introduction and Objectives—FERC
9:15 a.m.—The NEPA Pre-filing Process—Lauren O'Donnell, FERC
9:30 a.m.—Industry Perspective: Lessons Learned on Greenbrier Pipeline Project—Bob Orndorff and Sean Sleigh, Dominion Transmission, Inc.
10:15 a.m.—Break
10:30 a.m.—Panel Discussion: Perspectives from Local Stakeholders—Ron Meadows, citizen/property owner. Other participants to be confirmed.
11:30 a.m.—Perspective from a Cooperating Agency—Naomi Johnson, Jefferson National Forest
12 p.m.—Lessons Learned by FERC—Lauren O'Donnell, FERC
12:30 p.m.—Lunch (On Your Own)
1:45 p.m.—Landowner "Brochure" Development Workshop—Anne Gunning, Kearns & West
2:45 p.m.—Break
3 p.m.—Summary Discussion, Overall Comments, Next Steps
4 p.m.—Adjourn

[FR Doc. 03–22853 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

September 3, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: September 10, 2003; 11 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: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

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.

838th Meeting September 10, 2003; Regular Meeting, 11 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
FERC's Strategic Plan for FY 2003–2005

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Docket# ER03–552, 000, New York Independent System Operator, Inc.
Other#s ER03–552, 001, New York Independent System Operator, Inc.
ER03–552, 002, New York Independent System Operator, Inc.
ER03–552, 003, New York Independent System Operator, Inc.
ER03–984, 000, New York Independent System Operator, Inc.
ER03–984, 001, New York Independent System Operator, Inc.

E–3.
Docket# PL03–5, 000, Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements Under the Federal Power Act

E–4.
Omitted

E–5.
Docket# ER03–1081, 000, Midwest Independent Transmission System Operator, Inc.

E–6.
Omitted

E–7.
Omitted

E–8.
Docket# ER03–1114, 000, Carville Energy LLC

E–9.
Omitted

E–10.
Omitted

E–11.
Docket# ER03–510, 000, Delta Energy Center, LLC
Other#s ER03–510, 001, Delta Energy Center, LLC

E–12.
Docket# ER03–1038, 000, Florida Power and Light Company
Other#s EC03–104, 000, FPL Energy Seabrook, LLC

E–13.
Docket# ER02–488, 003, Midwest Independent Transmission System Operator, Inc.

E–14.
Omitted

E–15.
Docket# ER01–1807, 011, Carolina Power and Light Company and Florida Power Corporation
Other#s ER01–1807, 012, Carolina Power and Light Company and Florida Power Corporation
ER01–2020, 008, Carolina Power and Light Company and Florida Power Corporation
ER01–2020, 009, Carolina Power and Light Company and Florida Power Corporation

E–16.
Docket# ER02–562, 001, Michigan Electric Transmission Company

E–17.
Docket# TX03–1, 000, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn LLC
Other#s ER02–1741, 000, Nevada Power Company
ER02–1742, 000, Nevada Power Company
TX03–1, 001, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn LLC

E–18.
Omitted

E–19.
Docket# EL02–47, 001, Wisconsin Power and Light Company
Other#s EL02–47, 002, Wisconsin Power and Light Company
EL02–52, 001, Wisconsin Power and Light Company

E–20.
Docket# ER99–2854, 003, Entergy Services, Inc.
Other#s ER95–112, 014, Entergy Services, Inc.
ER96–586, 009, Entergy Services, Inc.
EL99–87, 003, Entergy Services, Inc.

E–21.
Docket# RT02–1, 004, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
Other#s EL02–9, 002, WestConnect RTO, LLC

E–22.
Omitted

E–23.
Omitted

E–24.
Docket# ER03–367, 001, Soyland Power Cooperative, Inc.

E–25.
Omitted

E–26.
Omitted

E–27.
Omitted

E–28.
Omitted

E–29.
Docket# ER03–574, 001, Midwest Independent Transmission System Operator, Inc.

E–30.
Docket# EL03–9, 001, Alternate Power Source, Inc. v. Western Massachusetts Electric Company and Northeast Utilities System

E–31.
Docket# EL03–127, 001, Commonwealth Edison Company v. Midwest Generation, L.L.C.

E–32.
Omitted

E–33.
Docket# ER03–249, 002, Illinois Power Company

E–34.
Omitted

E–35.
Docket# EL03–16, 001, PPL Electric Utilities Corporation

E–36.
Docket# EL02–122, 001, Sithe Power Marketing, L.P. and Exelon Generation Company, LLC v. ISO New England, Inc.

E–37.
Omitted

E–38.
Docket# ER03–743, 002, Virginia Electric and Power Company
Other#s ER03–743, 001, Virginia Electric and Power Company

E–39.
Docket# EL03–11, 003, Wisvest Connecticut, LLC v. ISO New England, Inc.

E–40.
Docket# EL03–42, 001, Occidental Power Services, Inc. v. PJM Interconnection, L.L.C.

E–41.
Omitted

E–42.
Omitted

E–43.
Docket# EL02–77, 000, Puget Sound Energy, Inc.

E–44.
Docket# EL03–120, 000, Morgan Stanley Capitol Group Inc.

E–45.
Docket# EL03–209, 000, Pinnacle West Energy Corporation v. Nevada Power Company
Other#s EL03–213, 000, Southern Nevada Water Authority v. Nevada Power Company

E–46.
Docket# ER01–1639, 004, Pacific Gas and Electric Company

E–47.
Docket# RT01–1, 000, RTO Informational Filings
Other#s RT01–5, 000, Maine Public Service Company
RT01–11, 000, Baconton Power LLC

RT01–16, 000, SOWEGA Power LLC
RT01–19, 000, Maine Electric Power Company
RT01–30, 000, Florida Keys Electric Cooperative Association, Inc.
RT01–39, 000, Concord Electric Company and Exeter and Hampton Electric Light Company
RT01–61, 000, Northern Maine Independent System Administrator, Inc.
RT01–86, 001, Bangor Hydo-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Services Company, The United Illuminating Company, Vermont Electric Power Company, Inc., and ISO New England Inc.
RT01–89, 000, Citizens Communications Company
RT01–90, 000, Fitchburg Gas and Electric Light Company, Concord Electric Company and Exeter and Hampton Electric Light Company
RT01–94, 001, NSTAR Services Company
RT01–95, 001, New York Independent System Operator, Inc.
RT01–97, 000, Central Vermont Public Service Corporation, Citizens Communications Company, Green Mountain Power Corporation, and Vermont Electric Power Company Inc.
RT01–99, 000, Regional Transmission Organizations
RT01–99, 001, Regional Transmission Organizations
RT02–3, 000, ISO New England Inc. and New York Independent System Operator, Inc.

E–48.
Omitted

E–49.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices

E–50.
Docket# PA02–2, 004, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices

E–51.
Docket# ER03–184, 000 Geysers Power Company, LLC
Other#s ER03–184, 001, Geysers Power Company, LLC

E–52.
Docket# EC03–100, 000, PDI Stoneman, Inc., and Mid-American Power, LLC

E–53.
Docket# ER02–1333, 001, PJM Interconnection, LLC

E–54.
Docket# EL03–28, 000, Town of Wallingford, Connecticut and Connecticut Municipal Electric Energy Cooperative v. Connecticut Light and Power Company, Select Energy, Inc., and Northeast Utilities Service Company

Markets, Tariffs and Rates—GAS

G–1.
Docket# RP96–200, 092, CenterPoint Energy Gas Transmission Company
Other#s RP96–200, 097, CenterPoint Energy Gas Transmission Company
RP96–200, 101, CenterPoint Energy Gas Transmission Company
RP96–200, 102, CenterPoint Energy Gas Transmission Company
RP96–200, 103, CenterPoint Energy Gas Transmission Company
RP96–200, 104, CenterPoint Energy Gas Transmission Company
RP96–200, 105, CenterPoint Energy Gas Transmission Company
RP96–200, 106, CenterPoint Energy Gas Transmission Company
RP96–200, 107, CenterPoint Energy Gas Transmission Company
RP96–200, 108, CenterPoint Energy Gas Transmission Company
RP96–200, 110, CenterPoint Energy Gas Transmission Company
RP96–200, 111, CenterPoint Energy Gas Transmission Company

G–2.
Docket# OR03–4, 000, Plantation Pipe Line Company v. Colonial Pipeline Company

G–3.
Docket# RP03–315, 001, Kern River Gas Transmission Company

G–4.
Omitted

G–5.
Docket# RP98–53, 000, Kinder Morgan Interstate Gas Transmission LLC
Other#s GP98–29, 000, ONEOK Resources Company

G–6.
Docket# RP00–473, 000, Carnegie Interstate Pipeline Company

G–7.
Docket# RP02–393, 000, Columbia Gas Transmission Corporation

G–8.
Omitted

G–9.
Docket# RP00–461, 001, Western Gas Interstate Company
Other#s RP00–461, 002, Western Gas Interstate Company

G–10.
Docket# RP01–503, 003, Natural Gas Pipeline Company of America
Other#s RP01–503, 002, Natural Gas Pipeline Company of America

G–11.
Docket# RP03–258, 003, Iroquois Gas Transmission System, L.P.

G–12.
Omitted

G–13.
Docket# RP00–332, 004, ANR Pipeline Company
Other#s RP00–332, 005, ANR Pipeline Company
RP00–332, 006, ANR Pipeline Company
RP00–597, 003, ANR Pipeline Company
RP03–182, 001, ANR Pipeline Company

G–14.
Docket# GP99–15, 002, Burlington Resources Oil and Gas Company
Other#s RP98–39, 002, Northern Natural Gas Company
SA98–101, 002, Continental Energy

G–15.
Docket# RP03–393, 002, Northern Natural Gas Company
Other#s RP03–393, 003, Northern Natural Gas Company

G–16.
Docket# OR02–6, 001, Sinclair Oil Corporation v. Rocky Mountain Pipeline System, LLC and BP Pipelines (North America), Inc.

G–17.
Docket# RP03–484, 000, The Toca Producers v. Southern Natural Gas Company
Other#s RP01–208, 000, Amoco Production Company, BP Exploration and Oil, Inc., Chevron U.S.A., Inc., Exxon/Mobil Gas Marketing Company and Shell Offshore, Inc.

G–18.
Docket# RP02–23, 000, El Paso Natural Gas Company v. Phelps Dodge Corporation

G–19.
Docket# PR02–14, 001, Bridgeline Gas Distribution LLC

G–20.
Docket# RP03–563, 000, Northern Border Pipeline Company

G–21.
Docket# RP03–564, 000, Dominion Cove Point LNG, LP
RP03–564, 001, Dominion Cove Point LNG, LP

Energy Project—HYDRO

H–1.
Docket# P–460, 021, City of Tacoma, Washington
Other#s P–460, 027, City of Tacoma, Washington

H–2.
Docket# P–2525, 046, Wisconsin Public Service Corporation
Other#s P–2522, 068, Wisconsin Public Service Corporation
P–2560, 042, Wisconsin Public Service Corporation
P–2595, 060, Wisconsin Public Service Corporation
P–2525, 044, Wisconsin Public Service Corporation
P–2525, 051, Wisconsin Public Service Corporation
P–2546, 063, Wisconsin Public Service Corporation
P–2546, 064, Wisconsin Public Service Corporation
P–2546, 068, Wisconsin Public Service Corporation
P–2560, 040, Wisconsin Public Service Corporation
P–2560, 047, Wisconsin Public Service Corporation
P–2522, 066, Wisconsin Public Service Corporation
P–2522, 074, Wisconsin Public Service Corporation
P–2595, 058, Wisconsin Public Service Corporation
P–2595, 065, Wisconsin Public Service Corporation

Energy Projects—Certificates

C–1.
Docket# CP02–430, 001, Saltville Gas Storage Company, L.L.C.
Other#s CP02–430, 002, Saltville Gas Storage Company, L.L.C.

C–2.
Docket# CP03–39 000, Kinder Morgan Interstate Gas Transmission, LLC

C–3.
Docket# CP03–46, 000, Dominion Transmission, Inc. and Texas Eastern Transmission, LP

C–4.

Docket# CP02–4, 005, Northwest Pipeline Corporation
Other#s CP02–4, 006, Northwest Pipeline Corporation

C–5.
Docket# CP03–29, 000, Columbia Gas Transmission Corporation

C–6.
Docket# CP03–41, 000, Dominion Transmission, Inc.
Other#s CP03–43, 000, Texas Eastern Transmission, LP

C–7.
Docket# CP03–57, 000, El Paso Natural Gas Company

C–8.
Docket# CP03–335, 000, Calpine Corporation and Otay Mesa Generating Company, LLC

C–9.
Docket# CP02–374, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
Other#s CP02–374, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–376, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–376, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–377, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–377, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–378, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–378, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)

C–10.
Docket# CP03–65, 000, Columbia Gas Transmission Corporation

C–11.
Docket# CP02–20, 001, Iroquois Gas Transmission System, L.P.

C–12.
Omitted

C–13.
Docket# CP01–153, 005, Tuscarora Gas Transmission Company

C–14.
Docket# CP02–434, 001, ANR Pipeline Company

C–15.
Docket# CP03–295, 000, Clear Fork Pipeline Company

C–16.
Docket# CP01–37, 000, Trans-Union Interstate Pipeline, L.P.
Other#s CP01–37, 001, Trans-Union Interstate Pipeline, L.P.

C–17.
Docket# CP96–248, 011, Portland Natural Gas Transmission System

Magalie R. Salas,

Secretary.

[FR Doc. 03–23117 Filed 9–5–03; 3:59 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 4, 2003.

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: September 11, 2003; 9:50 a.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on September 10, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23118 Filed 9–5–03; 3:59 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–8]

Science Advisory Board Staff Office; Announcement of a New Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis, a Request for Nominations, and a Request for Comments on the "Short List" Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces the formation of a new subcommittee of the Advisory Council on Clean Air Compliance Analysis (Council), requests nominations of candidates, and requests for comments on the proposed candidates for the "Short List". The Subcommittee will assist the Council in providing advice to the Agency regarding assessments of ecological effects related to the impacts of implementing the Clean Air Act (CAA). The new subcommittee, for which the SAB Staff Office is soliciting nominations, will be called the Ecological Effects Subcommittee (EES).

DATES: Nominations should be submitted no later than September 19, 2003.

Comments on the current or revised "Short List" candidates should be submitted no later than September 29, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. Angela Nugent, Designated Federal Officer (DFO), as indicated below. Information on experts also listed as "Short List" candidates, as described below, should also be submitted to Dr. Nugent.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Dr. Angela Nugent, (DFO), U.S. EPA Science Advisory Board, 1200 Pennsylvania Avenue, NW., (1400A), Washington, DC 20460; by telephone/voice mail at (202) 564–4562, by fax at (202) 501–0323; or via e-mail at *nugent.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: *Summary:* The EPA SAB Staff Office is announcing the formation of a new Subcommittee, the EES of the Council and is soliciting nominations for members. The Subcommittee will assist the Council in providing advice to the Agency on characterizing ecological effects related to the Agency's analyses required under section 312 of the Clean Air Act (CAA) of the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a separately chartered Federal advisory

committee Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.).

Background: In the past, the Council has relied on a Subcommittee called the Health and Ecological Effects Subcommittee (HEES) to provide advice on assessments of both health and ecological effects used in such analyses. On February 14, 2003, the SAB Staff Office published a **Federal Register** notice (68 FR 7531–7534), requesting nominations for the HEES as well as for another Subcommittee of the Council, the Air Quality Modeling Subcommittee, and for additional expertise needed for the Council itself. Background on the history and mandate given to the Council may be found in the referenced **Federal Register** notice.

On May 29, 2003, the SAB Staff Office published on the SAB website a Memorandum entitled "US EPA Science Advisory Board (SAB) Staff Office's Selection of Experts to Augment the Expertise of the Advisory Council on Clean Air Compliance Analysis to form a Special Council Panel for the Review of the Third 812 Analysis, the Air Quality Modeling Subcommittee, and the Health Effects Subcommittee" (see *http://www.epa.gov/science1/pdf/councilpanelselectionmemo.pdf*) In that memorandum, the Staff Office described its decision to focus the HEES on health effects and to rename it the "Health Effects Subcommittee" (HES).

The SAB Staff Office made the decision regarding the HES and the decision to establish the EES because of the importance of ecological issues to the Council, which noted in its most recent report, *Review of the Draft Analytical Plan for EPA's Second Prospective Analysis—Benefits and Costs of the Clean Air Act 1990–2020,* EPA–SAB–COUNCIL–ADV–01–004, that a "major effort" was needed "to develop credible methods to quantify and monetize the effects of marginal changes in air pollution on ecosystem processes' and to include non-market ecosystem services in future reports.

The general charge to the EES will be to assist the Council in: (a) Reviewing data to be used for any analysis of ecological effects required under section 312 of the CAA; (b) reviewing the methodology used to analyze such data and make recommendations on the use of such methodology; and (c) prior to the issuance of a report to Congress required under section 312 of the CAA, reviewing the findings of the report and make recommendations concerning the validity and utility of such findings. Members of the EES will provide advice to the Agency, through the council, over a two-year period.

The initial charge questions to be addressed by the EES related to the Agency's draft analytical plan are identified below. Expertise needed to address these questions and to meet the general charge to the EES identified in the paragraph immediately above are identified below under the heading "SAB Staff Office Request for Nominations."

Subsequent to the publication of the **Federal Register** notice referenced above, the SAB Staff Office issued another request for nominations on a related but separate advisory topic. This request was entitled "Science Advisory Board; Request for Nominations for Experts for a Panel on Valuing the Protection of Ecological Systems and Services' (68 FR 11082–11084, March 7, 2003). The charge to this new Committee is to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research. This charge includes many of the kinds of issues discussed in the Council Advisory Report for the Agency as a whole. SAB Staff Office decisions relating to the formation of this advisory group, were documented in a memorandum, "US EPA Science Advisory Board (SAB) Committee on Valuing the Protection of Ecological Systems and Services: Description of Process for Forming the Committee," dated August 11, 2003 and posted on the SAB Web site at *http://www.epa.gov/science1/panels/vpesspanel.html*. The Memorandum identifies the members of the Committee, who were selected from a "Short List" of 44 experts chosen from the nearly 150 experts nominated through the SAB Staff Office nomination process announced in the March 7, 2003, **Federal Register** notice.

The SAB Staff Office is issuing this notice in light of three considerations: (1) The February 14, 2003, **Federal Register** Request for Nominations for the Council and its subcommittees already included a request for nominees with expertise in ecosystem effects related to air pollution; (2) the "Short List" of experts resulting from the March 7, 2003, **Federal Register** Request for Nominations that led to the formation of the Committee on Valuing the Protection of Ecological Systems and Services already included ecologists with expertise appropriate for the EES; and (3) the "Short List" of ecological scientists resulting from the March 7, 2003, **Federal Register** notice included the two ecologists identified in response to the February 14, 2003, call. Considering the experts already identified, the SAB Staff Office will derive an initial "Short List" for the EES from the experts in ecology identified from the two previous requests for nominations and is providing the public with a brief final opportunity to provide additional nominations before the EES is formed. The candidates on this initial "Short List" will be posted on the SAB Web site at *http://www.epa.gov/science1/panels/scpanel812heesaqms.htm*.

Initial Charge Questions for the EES: The two initial charge questions to be addressed by the EES relate to the Agency's review document "Benefits and Costs of the Clean Air Act 1990—2020: Revised Analytical Plan For EPA's Second Prospective Analysis'and are identified below:

A. Does the Council support the plans described in chapter 7 for (a) qualitative characterization of the ecological effects of Clean Air Act-related air pollutants, (b) an expanded literature review, and (c) a quantitative, ecosystem-level case study of ecological service flow benefits? If there are particular elements of these plans which the Council does not support, are there alternative data or methods the Council recommends?

2. Initial plans described in chapter 7 reflect a preliminary EPA decision to base the ecological benefits case study on Waquoit Bay in Massachusetts. Does the Council support these plans? If the Council does not support these specific plans, are there alternative case study designs the Council recommends?

Document Availability: Links to EPA's past studies of the costs and benefits of the CAA, and to review material for the Council and its Subcommittees can be found at the following Web site, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/*. A link to the review document "Benefits and Costs of the Clean Air Act 1990–2020: Revised Analytical Plan For EPA's Second Prospective Analysis' can be found at *http://www.epa.gov/air/sect812/mainbody51203.pdf*.

SAB Staff Office Request for Nominations: Any interested person or organization may nominate qualified individuals for membership on the EES. Individuals should have expertise in one or more of the following areas: (a) *Ecosystem Effects Related to Air Pollution,* and (b) *Assessment of Ecological Effects for Benefits Analyses.*

Process and Deadline for Submitting Nominations or for Submitting Information: Any interested person or organization may nominate qualified individuals to serve as subcommittee members in the areas described above. The nominating form requests contact

information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume; and a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support.

Anyone who is unable to submit nominations through the SAB website, or has questions concerning any aspect of the nomination process, may contact Dr. Angela Nugent as indicated above in this FR notice. Nominations should be submitted in time to arrive no later than September 19, 2003.

The EPA Science Advisory Board Staff Office will acknowledge receipt of any nominations received. From the nominees identified by respondents to this **Federal Register** notice and through other sources (termed the "Widecast"), SAB Staff Office will determine whether individuals will need to be added to the existing "Short List" of candidates to be considered for the EES. Criteria used by the SAB Staff Office in developing this "Short List" are given at the end of the following paragraph. The SAB Staff Office will contact individuals who are considered for inclusion in the "Short List" to determine whether they are willing to serve on the Subcommittee. Any revisions to the "Short List" will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. The revised "Short List" also will be available from Dr. Nugent at the address listed above.

The public is requested to provide to the DFO information, documentation, or analysis about individuals listed on the "Short List" of candidates for the EES posted on the SAB Web site. The SAB Staff Office will consider this information in making the selection of subcommittee members. The public is requested also to provide additional nominations for the Subcommittee following the procedures identified below.

For the EPA SAB, a balanced committee, subcommittee, or panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the "Short List" candidates will be considered in the selection of the Subcommittee members, along with information provided by candidates and information gathered by EPA SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating individual nominees include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Those "Short List" candidates ultimately chosen to serve on the Subcommittee will be appointed as Special Government Employees. Therefore, all "Short List" candidates will be required to fill out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

Dated: August 27, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–22933 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–4]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II section 9(c). The purpose of the NEJAC is to provide advice and recommendations to the Administrator on issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

It is determined that NEJAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Charles Lee, NEJAC Designated Federal Officer, U.S. EPA, (mail code 2201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: August 27, 2003.

Barry E. Hill,

Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–22931 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7556–9]

Science Advisory Board Staff Office Advisory Council on Clean Air Compliance Analysis; Special Council Panel for the Review of the Third 812 Analysis; Notification of Two Upcoming Public Teleconferences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board Staff Office is announcing two public teleconference meetings of the Advisory Council on Clean Air Compliance Analysis Special Council Panel for the Review of the Third 812 Analysis (Panel).

DATES: *September 23, 2003.* A public teleconference meeting for the Council Panel will be held from 12 p.m. on September 23, 2003 to 1:30 p.m.

September 24, 2003. A public teleconference meeting for the Council Panel will be held from 12 p.m. on September 23, 2003 to 1:30 p.m.

ADDRESSES: Participation in the teleconference meeting will be by teleconference only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov,* or Ms.

Delores Darden, EPA Science Advisory Board Staff at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov*. Any member of the public wishing further information regarding the Council Special Panel may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the Council Special Panel will hold two public teleconference meetings, as described above, to advise the Agency on its plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act.

Background on the Council Special Panel and this advisory project was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The Council Special Panel will be providing advice on the review document, "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis' currently found at the following website, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/* under the link "Study Blueprint and Charge Questions Electronic Copy." This link provides electronic access to the Revised Analytical Plan, the "change pages" given to the Council in July 2003, and the detailed review charge questions.

Procedures for Providing Public Comment. It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 5, 2003.

A. Robert Flaak,

Acting Deputy Director for Management, EPA Science Advisory Board Staff Office.

[FR Doc. 03–23052 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OW–2003–0071; FRL–7555–6]

Availability of Decision on Petition for Rulemaking To Repeal Regulation Related to Ballast Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of EPA decision document.

SUMMARY: This notice announces the availability of EPA's Decision Documenton on a petition for rulemaking seeking repeal of a regulation that excludes vessel ballast water discharges from Clean Water Act permit requirements. Today's notice makes that Decision Document publicly available and announces EPA's denial of the petition.

DATES: EPA's Acting Administrator signed the Decision Document on September 2, 2003. For judicial review purposes, this action is final as of 1 p.m. (eastern time) on Tuesday, September 9, 2003, as provided at 40 CFR 23.2.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center in the basement of the EPA West Building, Room B–102, at 1301 Constitution Avenue., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruby Cooper, U.S. EPA, Office Of Water, by phone at 202–564–0757 or by e-mail at *cooper.ruby@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the Document and other Related Information?

1. Electronic Copies : EPA's decision on the petition for rulemaking can be downloaded at *http://www.epa.gov/npdes;* once at this location, click on "Recent Additions'.

2. Docket: EPA has established an official public docket for this action under Docket ID No. OW–00–16. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

3. Electronic Access: You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http:///www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system EPA Dockets. You may use EPA Dockets at *http://www.epa.gov.edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search", then key in the appropriate docket identification number, which for this record is OW–2003–0071.

Dated: September 2, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–22935 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–7]

Proposed National Pollutant Discharge Elimination System (NPDES) Storm Water General Permits for Small Municipal Separate Storm Sewer Systems (MS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma and Preliminary Designation Decisions for Small MS4s Outside Urbanized Areas in New Mexico; Notice

AGENCY: Environmental Protection Agency (EPA), Region 6.

ACTION: Notice of availability for comment.

SUMMARY: The Director of the EPA Region 6 Water Quality Protection Division is proposing to issue National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) located in the State of New Mexico, Indian Country Lands in New Mexico, and Indian Country Lands in Oklahoma. The proposed general permits would authorize the discharge of storm water and certain non-storm water discharges from municipal separate storm sewers. NPDES permit coverage for these discharges is required in accordance with section 402(p) of the 1987 Amendments to the Clean Water Act (CWA) (33 U.S.C. 1342(p)) and EPA regulations. To obtain discharge authorization, operators of MS4s would be required to submit a Notice of Intent (NOI) to be covered by the proposed general permit. The NOI would need to include storm water management program information describing the best management practices (BMPs) which the permittee will implement to control pollutants in the discharges in accordance with the requirements of the CWA and measurable goals for their implementation. In accordance with 40 CFR 122.34(a), the operator would have up to five years to develop and fully implement the storm water management program. The initial storm water management program submittal would likely consist of a combination of ongoing activities and schedules for developing and implementing additional activities to comply with the permit. Annual reporting would also be required to provide information on the status of the implementation of the storm water management program. This Notice announces the availability of the proposed general permits and fact sheet for public comment. Note that while the proposed general permits are structured as a single permit, and may be collectively referred to in the singular as the permit, they are actually three legally distinct permits each covering a different geographical area.

Each of the legally separate and distinctly numbered proposed permits covers one of the areas listed in the table below. Parts 1–7 of the proposed general permit and the Appendices are common to all of the permits, while Part 8 of the permit contains the State, Indian Country Land or other area-specific conditions that make each of the permits unique. The proposed general permits will cover areas within Region 6 where a State or Tribal permitting program has not been authorized under section 402(b) of the CWA. Indian Country includes all lands within Indian reservations, all dependent Indian communities, and Indian allotments. In Oklahoma it also includes lands held in trust for the benefit of Tribes. At this time, no regulated MS4s under EPA jurisdiction are located in Arkansas, Louisiana, or Texas, so permits for these areas are not being proposed by Region 6. Most MS4s in Arkansas, Louisiana, Oklahoma, and Texas are regulated by NPDES-authorized State programs.

PERMIT AREAS

Permit No.	Areas of coverage
OKS040001	Indian Country Lands within the State of Oklahoma.
NMS040001	Indian Country lands within the State of New Mexico, except Navajo Reservation lands and Ute Mountain Ute Reservation lands (permitted by EPA Regions 9 and 8, respectively).
NMS040000	The State of New Mexico, except Indian Country Lands.

This notice also announces the availability for public comment of the preliminary results of the Region's review of those New Mexico small MS4s with a population of between 10,000 and 50,000 and a population density of 1,000 or more per square mile that are located outside a Urbanized Area for possible designation as a regulated small MS4 (see 40 CFR 123.35(b)). Although EPA is not required to do so, EPA is inviting and will consider comments it receives regarding the small MS4 designation review.

DATES: The public comment period for the proposed general permits is 45 days starting from the date of today's notice. Interested parties may submit comments on the proposed general permits to EPA Region 6 at the address below, no later than October 24, 2003. Any comments received by EPA Region 6 and EPA's response to these comments will become part of the administrative record for these general permits. The general permits will be effective on the date specified in the final general permit notice that will be published in the **Federal Register** and will expire five years from the effective date of the final permit.

Comments on the small MS4 designation review process or preliminary decisions must be submitted by October 24, 2003, to the same address.

ADDRESSES: Comments on the proposed general permits should be sent to Docket No. 6WQ–03–SW01, Attn: Ms. Diane Smith, EPA Region 6, Water Quality Protection Division (6WQ–CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted in electronic format (Wordperfect 9, MS Word 2000, or ASCII Text formats only, avoiding use of special characters) to the above address or via e-mail to *smith.diane@epa.gov*. No facsimiles (faxes) will be accepted. Comments on the designation review process or preliminary decisions must reference "MS4 Designation Review."

Public Meeting Information

EPA Region 6 will be holding two informal public meetings which will include a presentation on the proposed general permits and a question and answer session. Advance notice of the times and dates for these meetings was provided in the Albuquerque Journal and the Daily Oklahoman newspapers on August 9, 2003, and via EPA's Web site at *http://www.epa.gov/region6/6wq/npdes/sw/hot/index.htm*. Because informal public meetings accommodate group discussion and question and answer sessions, public meetings have been used for many storm water general permits and appear to be more valuable than formalized public hearings in helping the public understand a proposed storm water general permit and in identifying the issues of concern. Written, but not oral, comments for the administrative record will be accepted at the public meetings. Written comments generated from what was learned at a public meeting (or from

discussion with someone who did attend) may also be submitted any time up to the end of the comment period.

Albuquerque, NM—September 11, 2003 @ 1 p.m.

Albuquerque Technical Vocational Institute, Workforce Training Center, Conference Rooms 101 & 103, 5600 Eagle Rock Ave, NE., Albuquerque, NM 87113.

Oklahoma City, OK—September 15, 2003 @ 1 p.m.

Metro Tech Conference Center, Auditorium, 1900 Springlake Drive, Oklahoma City, OK 73111.

Requests for a Public Hearing

Interested persons may also request a public hearing pursuant to 40 CFR 124.11 concerning the proposed general permit. Requests for a public hearing must be sent or delivered in writing to the same address for comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12(a), the Regional Administrator will hold a public hearing if he finds, on the basis of requests, a significant degree of public interest in the proposed permit(s). If the Regional Administrator decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed general permits at the public hearing.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed general permits and preliminary designation decisions may be obtained from Ms. Terry Branch at 214–665–6667 or *branch.terry@epa.gov* or Ms. Diane Smith at 214–665–2145 or *smith.diane@epa.gov*. The mail address for both Ms. Branch and Ms. Smith is EPA Region 6, Customer Assistance Branch (6WQ–CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: The proposed general permits and fact sheet, which also includes information on preliminary small MS4 designation decisions, may be obtained from the Internet via the EPA-Region 6 Web site at *http://www.epa.gov/region6/6wq/npdes/sw/ms4/index.htm*. The proposed general permits are accompanied by a fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permits. To obtain a hard copy of these documents or any other information in the administrative record, please contact Ms. Diane Smith or Ms. Terry Branch. Contact information is provided in the **ADDRESSES** section above. A reasonable fee may be charged for copying requests. When the final general permits are issued, notice will be published in the **Federal Register**. The final general permits will be effective on the date specified in the **Federal Register** and will expire five years from that date.

Paperwork Reduction Act: This action does not impose any new information collection burden. These general permits do not impose any information collection requirements beyond those required by EPA regulations (40 CFR 122.26, 122.28, 122.30–.37, 122.41, and 122.48). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0211, EPA ICR number 1820.03. A copy of each OMB approved Information Collection Request (ICR) may be obtained from the Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 566–1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Executive Order 12866: Under Executive Order 12866 (58 FR 51735, October 4, 1993) an agency must determine whether its regulatory action is "significant" and therefore subject to OMB review and the requirements of Executive Order 12866. This Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act (RFA): Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under 5 U.S.C. 553 (Administrative Procedure Act) or any other law, and is thus not subject to the RFA requirement to prepare a regulatory flexibility analysis. The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6). The APA defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to

the extent that such regulations incorporate requirements specifically set forth in law.") UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the RFA. That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the APA], or any other law * * *." As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on proposed general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules."

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 2, 2003.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–22934 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 11, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—August 14, 2003 (Open and Closed)

B. Reports

- Trends in Corporate Governance
- Corporate/Non-corporate Approvals Report
- FCS Building Association Quarterly Report
- Financial Institution Rating System (FIRS)—Earnings Discussion
- FCA's Interagency Agreements with SBA and USDA

C. New Business—Other

- Fall 2003 Unified Agenda/FY 2004 Regulatory Performance Plan Approval
- FY 2004/2005 Budget Approvals

Closed Session *

New Business

- OSMO Quarterly Report

Dated: September 5, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–23013 Filed 9–5–03; 11:10 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 26, 2003.

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 October 9, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.1504, Disclosure Requirements for Information Services Provided Through Toll-Free Numbers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,750.

Estimated Time per Response: 2–5 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,500 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR Section 64.1504 incorporates in the Commission's Rules, the requirements of Sections 228(c)(7)–(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider includes in response to each

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0749.

Title: Section 64.1509, Disclosure and Dissemination of Pay-Per-Call Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25 respondents.

Estimated Time per Response: 410 hours.

Frequency of Responses: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,250 hours (multiple responses).

Total Annual Cost: None.

Needs and Uses: Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available (1) a description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

OMB Control Number: 3060–0752.

Title: Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,350.

Estimated Time per Response: 10–40 hours.

Frequency of Response: Annual reporting requirement; Third party disclosure.

Total Annual Burden: 27,000 hours.

Total Annual Cost: None.

Needs and Uses: Under 47 CFR Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that (1) the charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22792 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:18 a.m. on Friday, September 5, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 5, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–23088 Filed 9–5–03; 3:09 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 52770.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., September 11, 2003.

Correction

The wording of the Title for Item 1 was incorrect it should read:

1. Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season and Section 15 Responses from TSA and Carriers Operating in the Inbound Transpacific Trades.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–23116 Filed 9–5–03; 3:40 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its

approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board– approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 10, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e– mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report:

1. Report title: Monthly Report of Traveler's Checks Outstanding

Agency form number: FR 2054

OMB control number: N/A

Frequency: Monthly

Reporters: Nonbank issuers of travelers checks in the United States

Annual reporting hours: 84 hours

Estimated average hours per response: 1 hour

Number of respondents: 7

General description of report: This information collection is voluntary (12 U.S.C. 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The report collects the month–end total amount outstanding of dollar– denominated traveler's checks issued by seven major nonbank issuers. The Federal Reserve uses these data in the computation of the nonbank traveler's check component of the monetary aggregates.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports:

1. Report title: The Government Securities Dealers Reports: The Weekly Report of Dealer Positions (FR 2004A), The Weekly Report of Cumulative Dealer Transactions (FR 2004B), The Weekly Report of Dealer Financing and Fails (FR 2004C), The Weekly Report of Specific Issues (FR 2004SI), The Daily Report of Specific Issues (FR 2004SD), and The Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004

OMB control number: 7100–0003

Frequency: Weekly, Daily

Reporters: Primary dealers in the U.S. government securities market

Annual reporting hours: 12,342 hours

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2 hours; FR 2004C, 1.25 hours; FR 2004SI, 2 hours; FR 2004SD, 2 hours; FR 2004WI, 1 hour.

Number of respondents: 22

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2), 353–359, and 461(c)); however, primary dealers are expected to file the report with the Federal Reserve. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The FR 2004A collects data as of Wednesday of each week on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects data cumulated for the week ended Wednesday on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects data as of Wednesday of each week on the amounts of dealer financing and fails. The FR 2004SI collects data as of Wednesday of each week on outright, financing, and fails positions in current or on–the–run issues. Under certain circumstances the FR 2004SI data can also be collected on a daily basis for on–the–run and off–the–run securities. The FR 2004WI collects daily information on a next–business–day basis on positions in to–be–issued Treasury coupons securities, mainly the trading on a when–issued delivery basis.

Current actions: The Federal Reserve proposes to make the following modifications to the reporting series: 1) delete the columns for cumulative weekly volume and average weekly rates for repurchase agreements on the FR 2004C, 2) include a new column, FRBNY Security ID, on the FR 2004SI,

3) formalize the collection of the FR 2004SI daily data in the new reporting form, FR 2004SD, 4) publish all data collected on the FR 2004C, (5) change the data submission schedule to be uniform across the four weekly reports, and (6) adjust row and column headings to be uniform across reports and to more clearly identify the data to be reported. The revised reporting forms would be implemented as of January 7, 2004.

Board of Governors of the Federal Reserve System, September 3, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22850 Filed 9–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting; Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE 12 noon, Monday September 15, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–23087 Filed 9–5–03; 3:09 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

DATE: Weeks of September 8, 15, 22, 29, October 6, 13, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 8, 2003

Wednesday, September 10, 2003

1 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Thursday, September 11, 2003

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m.—Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss, 301–415–3264).

Thus meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, September 25, 2003

9 a.m.—Meeting with Nuclear Reactor Industry on Security Force Work Hour Limitations (Public Meeting).

This meeting will be wedcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of September 29, 2003—Tentative

Thursday, October 2, 2003

9:30 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

1:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of October 13, 2003—Tentative

Wednesday, October 15, 2003

1:30 p.m.—Briefing on License Renewal Program, Power Update Activities, and High) Priority Activities (Public Meeting) (Contact: Jimi Yerokun, (301) 415–2292).

* 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/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 4, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–23015 Filed 9–5–03; 11:47 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting and Request for Public Comment: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the second meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on October 22, 2003 and 8:30 a.m. to 5 p.m. on October 23, 2003 at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC. The meeting will be open to the public with attendance limited to space available.

On the first day of the meeting, the Committee will review the roles, activities, and plans of the Federal regulatory agencies with regard to the oversight of genetic technologies, including pharmacogenomic

technologies, to determine whether further study of this area is warranted. Program officials from the Food and Drug Administration, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention, and Federal Trade Commission will brief the Committee about current and planned regulatory approaches with respect to genetic technologies. On the second day, the Committee will review Federal efforts to address the adequacy of the genetics workforce and the education and training of health professionals in genetics. Reports will also be provided on the efforts of professional societies and organizations to enhance the preparedness of health professionals in genetics. The Committee will also hold a session on related international activities at which representatives of the Human Genetics Commmission of the United Kingdom and the Australian Law Reform Commission will report on their countries' efforts to address emerging issues by advances in genetic technologies. Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

SACGHS welcomes receiving comments from the public on any issues related to its mandate. For the October meeting in particular, the Committee would welcome public comment on: (1) The adequacy of the education and training of health professionals in genetics and the genetics workforce and whether current efforts to prepare health professionals to use genetic technologies are adequate and, if not, what the gaps are and how should they be addressed; and (2) the role, current activities, and plans of the Federal regulatory agencies to assure the safety and appropriate marketing of genetic tests. Written comments submitted to the Committee by October 1, 2003 will be considered part of the Committee's deliberations. Time will also be provided during the meeting for public commentary. Written public commments should be submitted by mail, email, or fax to the following: Edward R.B. McCable, M.D., Ph.D., Chair, Secretary's Advisory Committee on Genetics, Health and Society, c/o NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, (301) 496–9839 (fax), *sell2c@nih.gov*.

Members of the public who wish to make a statement to the Committee during the meeting should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at (301) 496–9838 or e-mail at *sc112c@nih.gov*.

The draft meeting agenda and other information about SACGHS will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, are asked to notify Ms. Carr in advance of the meeting by contacting her at the phone number or e-mail address listed above.

Dated: August 27, 2003.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22829 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include the following: SARS; Smallpox Vaccination Program; Monkeypox; State and Local Programs including Hospital Programs; R&D Initiatives including Bioshield; and Modeling Initiatives.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: September 22–23, 2003.

Time: September 22 9 a.m.–6 p.m.; September 23 9 a.m.–3 p.m.

Place: Sheraton National Hotel Arlington, Columbia Pike & Washington Blvd., 900 South Orme Street, Arlington, Virginia 22204, Telephone: (703) 521–1900.

Contact Person: Dr. Judy Blumenthal, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–401–4848.

SUPPLEMENTARY INFORMATION: The Secretary's Council on Public Health Preparedness was established on October 22, 2001, by the Secretary of Health and Human Services under the authorization of section 319 of the Public Health Service Act (42 U.S.C. 247d); section 222 of the Public Health Service Act (42 U.S.C. 217a). The purpose of the Secretary's Council on Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by e-mailing *publichealth@iqsolutions.com* no later than close of business, Monday, September 15, 2003. All requests should include the name, address, telephone number, and business or professional affiliation of those registering.

Opportunities for oral statements by the public will be provided on Tuesday, September 23, 2003, at approximately 11:30 a.m. Oral comments will be limited to 5 minutes, three minutes to make a statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by e-mailing *publichealth@iqsolutions.com* no later than close of business, Monday, September 15, 2003. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *publichealth@iqsolutions.com* for inclusion in the public record no later close of business, Monday, September 15, 2003.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, Monday, September 15, 2003.

Because of the need to provide advice and recommendations on bioterrorism, this notice is being published at the earliest possible time.

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22830 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS) Board of Scientific Counselors (BSC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), NCHS announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Health Statistics.

Times and Dates: 2 p.m.–5:40 p.m., October 9, 2003. 8:30 a.m.–5:30 p.m., October 10, 2003.

Place: National Center for Health Statistics, Conference Rooms 1403A and 1405B, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The committee is charged with providing advice and recommendations to the Secretary, HHS; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Discussed: The meeting on October 9 will be devoted to orientation of new members. The orientation provides background information on procedures for new committee members. Although members of the public may attend, the orientation is not part of the public meeting.

The agenda for the meeting on October 10 will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, October 3, 2003. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, October 3, 2003.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Linda Blankenbaker, Executive Secretary, National Center for Health Statistics, Office of the Director, 3311 Toledo Road, Room 7204, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22885 Filed 9–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0050]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Investigational Device Exemptions Reports and Records" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 2003 (68 FR 35677), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0078. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22901 Filed 9–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Agency Emergency Processing Under Office of Management and Budget Review; Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 15, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA

FDA is requesting OMB approval under the PRA (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the Pilot 2 program.

In conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

Under the CMA pilot program, Pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in the program. Pilot 2 is an exploratory program that will allow FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of one Fast Track product per review division in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) will be selected to participate. This guidance provides information regarding the selection of participant applications for Pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of Pilot 2. FDA will begin accepting applications for participation in Pilot 2 on October 1, 2003.

The guidance describes one collection of information: Applicants who would like to participate in Pilot 2 must submit an application (Pilot 2 application) containing certain information outlined in the guidance. The purpose of the Pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between FDA and the applicant during the product development process.

FDA's regulation at § 312.23 (21 CFR 312.23) states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. Part 312 and FDA Form 1571 have a valid OMB control number: OMB control number 0910–0014, which expires January 31, 2006.

In the guidance document, CDER and CBER ask that a Pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, Pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a Pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each Pilot 2 application is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the Pilot 2 application is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the guidance, the agency asks applicants to include the following information in the Pilot 2 application:

- Cover letter prominently labeled "Pilot 2 application;"
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of new drug applications/biologic licensing applications submissions;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., chemistry/manufacturing/controls, pharmacology/toxicology, clinical, clinical pharmacology and biopharmaceutics);
- Rationale for interest in participating in Pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information will be used by the agency to determine which Fast Track products are eligible for participation in Pilot 2. Participation in this pilot program will be voluntary.

Based on the number of approvals for Fast Track designations and data collected from the review divisions and offices within CDER and CBER, FDA

estimates that in fiscal year (FY) 2002, 109 drug product applications and 46 biological products had Fast Track designation. FDA anticipates that approximately 85 drug product applicants (respondents) and approximately 29 biological product applicants (respondents) will submit at least one Pilot 2 application. Based on information collected from offices within CDER and CBER, the agency further anticipates that the total responses, i.e., the total number of applications received for Pilot 2, will be 90 for drug products and 35 for biological products. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted in a Pilot 2 application in accordance with the guidance, is estimated to be approximately 80 hours. Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a Pilot 2 application. Therefore, the agency estimates that applicants will use approximately 10,000 hours to complete the Pilot 2 applications.

In the **Federal Register** of June 17, 2003 (68 FR 35901), FDA announced the availability of the draft guidance and requested comments for 60 days on the information collection. Four comments were received that did not pertain to the information collection estimates.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 Application	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CDER	85	1.06	90	80	7,200
CBER	29	1.20	35	80	2,800
Total					10,000

[1]There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: September 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22949 Filed 9–4–03; 3:01 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 3, 2003, from 8:30 a.m. to 4 p.m.

Location: Gaithersburg Marriott, Salons E, F, and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an implantable contact lens for the correction of moderate to high myopia between -3.0 diopters (D) to -20D with or without astigmatism up to 2.5D and is intended for placement in the posterior chamber of the phakic eye. Background information, including the attendee list, agenda, and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 25, 2003. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–22790 Filed 9–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Re-Contacting Participants in the Observing Protein and Energy Nutrition (Re-Open) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal**

Register on May 6, 2003, page 24007 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

Proposed Collection: Title: Re-contacting Participants in the Observing Protein and Energy Nutrition (Re-OPEN) Study. *Type of Information Collection Request:* Reinstatement with change (OMB #0925–0465, expiration 07/31/02). *Need and Use of Information Collection:* The agency conducts and funds studies examining the relationship between diet and chronic diseases. The study will collect food intake and physical activity data and body weight measurements on a cohort of approximately 482 free-living men and women, 43 to 72 years of age, who have participated in the 1999 Biologic Specimen-Based Study of Dietary Measurement Error for Nutritional Epidemiology and Surveillance. Participants will complete a food frequency questionnaire, two 4-day food intake records, one 7-day food intake checklist, a physical activity questionnaire, and a body weight measurement. The data will be used to assess the magnitude and structure of dietary measurement error in dietary assessment instruments for dietary surveillance and nutritional epidemiologic studies.

Frequency of Response: One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* U.S. adults 43–72 years. The annual reporting burden is as follows:

Data collection task	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total hour burden	Estimated total annual burden hours requested
Enrollment Form	482	1	0.083	40	13
Food frequency questionnaire	482	1	1	482	161
4-Day food record 1	482	1	1.332	642	214
4-Day food record 2	482	1	1.332	642	214
Food Checklist	482	7	.117	395	132
Physical activity questionnaire	482	1	.25	120	40
Weight measurement	482	1	.25	120	40
Total	482			2443	814

The annualized cost to respondents is estimated at $13,024. There are no Capital Costs to report. There are no Operating and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Amy Subar, Ph.D., Project Officer, National Cancer Institute, EPN 313, 6130 Executive Blvd MSC 7344, Bethesda, MD 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to: *subara@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 2, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–22828 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; the National Diabetes Education Program Comprehensive Evaluation Plan

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The National Diabetes Educations Program Comprehensive Evaluation Plan. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The National Diabetes Education Program (NDEP) is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The long-term goals of the NDEP are to improve the treatment and health outcomes of people with diabetes, to promote early diagnosis, and, ultimately, to prevent the onset of diabetes. The NDEP objectives are: (1) To increase awareness of the seriousness of diabetes, its risk factors, and strategies for preventing diabetes and its complications among people at risk for diabetes; (2) to improve understanding about diabetes and its control and to promote better self-management behaviors among people with diabetes; (3) to improve health care providers' understanding of diabetes

and its control and to promote an integrated approach to care; (4) to promote health care policies that improve the quality of and access to diabetes care.

Multiple strategies have been devised to address the NDEP objectives. These have been described in the NDEP Strategic Plan and include: (1) Creating partnerships with other organizations concerned about diabetes; (2) developing and implementing awareness and education activities with special emphasis on reaching the racial and ethnic populations disproportionately affected by diabetes; (3) identifying, developing, and disseminating educational tools and resources for the program's audiences; (4) promoting policies and activities to improve the quality of and access to diabetes care.

The NDEP evaluation will document the extent to which the NDEP program has been implemented, and how successful it has been in meeting program objectives. The evaluation relies heavily on data gathered from existing national surveys such as National Health and Nutrition Examination Survey (NHANES), the National Health Interview Survey (NHIS), the Behavioral Risk Factor Surveillance System (BRFSS), among others for this information. This generic clearance request is for the collection of additional primary data from NDEP target audiences on some key process and impact measures that are necessary to effectively evaluate the program. Approval is requested for up to 4 surveys of audiences targeted by the National Diabetes Education Program including people at risk for diabetes, people with diabetes and their families, health care providers, payers and purchasers of health care and health care system policy makers.

Frequency of Responses: On occasion. *Affected public:* Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; Federal government; and state, local or tribal government. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2200, *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .25; and *Estimated Total Annual Burden Hours Requested:* 200. The annualized cost to respondents is estimated at: $5,437.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Total hour burden
Patients and their family members	1,000	1	.25	250
People at risk for diabetes	600	1	.25	150
Physicians or other health care providers	600	1	.25	150
Health care systems	200	1	.25	50
Total	2,400			600

COST TO RESPONDENTS

Type of respondents	Number of respondents	Frequency of response	Hourly wage rate	Respondent cost
Patients and their family members	1,000	1	$20.00	$5,000.00
People at risk for diabetes	600	1	20.00	3,000.00
Physicians or other health care providers	600	1	75.00	11,250.00
Health care systems	200	1	50.00	2,500.00
Total				21,750.00

Note: On an annual basis, the average number of respondents is 800; the average number of hours is 200 and the average annual respondent cost is $5,437.50.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joanne Gallivan, M.S., R.D., Director, National Diabetes Education Program, NIDDK, NIH, Building 31, Room 9A04, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 494–6110 or E-mail your request, including your address to: *Joanne_Gallivan@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 14, 2003.

Barbara Merchant,

Executive Officer, NIDDK, National Institutes of Health.

[FR Doc. 03–22831 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Proposed Collection; Comment Request Exam 2—The Jackson Heart Study, Annual Follow-Up Component

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Exam 2—The Jackson Heart Study, Annual Follow-up Component. *Type of Information Collection Request:* Revision (OMB 0925–0491; expiration 07/31/2004). *Need and Use of Information Collection:* The Jackson Heart Study (JHS) Clinical Component will involve 5,500 African-American men and women aged 21–84, representative of African-American residents of Jackson, Mississippi. Family members are included in order to permit future studies of familial and genetic contributions to cardiovascular disease (CVD). The JHS Clinical Component has received Clinical Exemption (CE–99–11–C9) from the NIH Clinical Exemption Review Committee. The continuation of the study will allow continued assessment of subclinical coronary disease, left ventricular dysfunction, progression of carotid atherosclerosis and left ventricular hypertrophy, and responses to stress, racism, and discrimination as well as new components such as renal disease, body fat distribution and body composition, and metabolic consequences of obesity. The continuation of the JHS in FY05 is proposed to support 2 clinical examinations 4 years apart and continued cohort follow-up for events. The collection of follow-up information also involves third party individuals (next-of-kin decedents and physicians). This information is necessary for the interpretation and analysis of clinical findings and outcomes to ascertain the relationship between mortality and morbidity in the clinical study cohort. The information collected will be used by the public and private sector for public health planning, medical education, other epidemiologic studies, and biomedical research.

Frequency of Response: One-time. *Affected Public:* Individuals or families; Businesses or other for profit; not-for-profit institutions. *Type of Respondents:* Third party respondents (next-of-kin decedents and physicians). The annual reporting burden is as follows: *Estimated Number of Respondents:* 600; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.50; and *Estimated Total Annual Burden Hours Requested:* 300. *The annualized cost to respondents is estimated at:* $6,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Morbidity & Mortality AFU 3rd party next-of-kin decedents	300	1	0.50	150
Morbidity & Mortality AFU 3rd party Physicians	300	1	0.50	150
Total				300

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Cheryl Nelson, Jackson Heart Study Project Officer, 6701 Rockledge Drive, Room 8152, MSC 7934, Rockville, MD 20892–7934, or call non-toll-free number (301) 435–0451 or E-mail your request, including your address to: *cn80n@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 20, 2003.

Peter Savage,

Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 03–22832 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 16, 2003.

Open: 8:30 am to 12 pm.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives. The main topic of the Board will be "Strategic Planning for Global Health: Proposed Process."

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: 1 pm to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22825 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting and Request for Public Comment: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Pub. L. 92–463, notice is hereby given of the second meeting of the Secretary's Advisory Committee on Genetics, Health,and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on October 22, 2003 and 8:30 a.m. to 5 p.m. on October 23, 2003 at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC. The meeting will be open to the public with attendance limited to space available.

On the first day of the meeting, the Committee will review the roles, activities, and plans of the Federal regulatory agencies with regard to the oversight of genetic technologies, including pharmacogenomic technologies, to determine whether further study of this area is warranted. Program officials from the Food and Drug Administration, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention, and Federal Trade Commission will brief the Committee about current and planned regulatory approaches with respect to genetic technologies. On the second day, the Committee will review Federal efforts to address the adequacy of the genetics workforce and the education and training of health professionals in genetics. Reports will also be provided on the efforts of professional societies and organizations to enhance the preparedness of health professionals in genetics. The Committee will also hold a session on related international activities at which representatives of the Human Genetics Commission of the United Kingdom and the Australian Law Reform Commission will report on their countries' efforts to address emerging issues raised by advances in genetic technologies. Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

SACGHS welcomes receiving comments from the public on any issues related to its mandate. For the October meeting in particular, the Committee would welcome public comment on: (1) The adequacy of the education and training of health professionals in genetics and the genetics workforce and whether current efforts to prepare health professionals to use genetic technologies are adequate and, if not, what the gaps are and how should they be addressed; and (2) the role, current activities, and plans of the Federal regulatory agencies to assure the safety and appropriate marketing of genetic tests. Written comments submitted to the Committee by October 1, 2003 will be considered part of the Committee's deliberations. Time will also be provided during the meeting for public commentary. Written public comments should be submitted by mail, e-mail, or fax to the following. Edward R.B. McCabe, M.D., PhD., Chair, Secretary's Advisory Committee on Genetics, Health and Society, c/o NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9839 (fax), *sc112c@nih.gov*.

Members of the public who wish to make a statement to the Committee during the meeting should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at (301) 496–9838 or e-mail at *sc112c@nih.gov*.

The draft meeting agenda and other information about SACGHS will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, are asked to notify Ms. Carr in advance of the meeting by contacting her at the phone number or e-mail address listed above.

Dated: August 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22827 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Mouse Models of Human Cancers Consortium.

Date: October 8–9, 2003.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22815 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

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 in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: September 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: Open; Future of DCLG Process; Results of Advocacy Survey; Recommendations for Future of DCLG; Role on Behalf of Advocacy Community; Advocates on Other NCI Advisory Committees; Priority Issues; President's Cancer Panel Model; Function Regarding NCI Priorities; Role of Consumer in Research and Related Activities Program; Membership; Communication/Involvement with Advocacy Community; Summary & Next Steps.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC 8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22816 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist Development Award.

Date: November 6–7, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Roy L. White, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892, 301–436–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 99.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22813 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Minority Training Grants.

Date: October 22–23, 2003.

Time: 6:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program No. 93.233, National Center for Sleep Disorders Research; 93.837, heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22823 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 30–31, 2003.

Open: October 30, 2003, 8 a.m. to 3 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Closed: October 30, 2003, 3 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22824 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 4, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A Bethesda, MD 20892; 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22814 Filed 9–08–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health 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 in advance of the meeting.

Name of Committee: National Children's Study of Environmental Effects on Health Advisory Committee.

Date: September 15–16, 2003.

Time: September 15, 2003, 8 a.m. to 5 p.m.

Agenda: Members of the public that plan to attend should contact Circle Solutions at (703) 902–1339 or via e-mail ncs@circlesolutions.com. For Agenda updates, please visit the NCS Web site *nationalchildrensstudy.gov*.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Room: Versaille I, Bethesda, MD 20814.

Time: September 15, 2003, 8 a.m. to 5:30 p.m.

Agenda: Discussions will include activities presented at the June 2003 mtg; a review of all existing hypotheses for the purposes of identifying gaps and areas that require more attention; an explicit feedback will be developed on previously submitted hypotheses that will be provided to various Working Groups.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Room Versaille I, Bethesda, MD 20814.

Contact Person: Jan Leahey, Executive Secretary, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 7A07, Bethesda, MD 20892, (301) 435–8867, *leaheyj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22817 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materiâl, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–2003–10 & RFP–2003–11 "Pediatric Off-Patient Drug Study (PODS) Center".

Date: September 9, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Kishena C. Wadhwani, PhD, Scientific Review Administrator, Division of Scientific review, 9000 Rockville Pike, MSC 7510, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan repayment Program, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22818 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities—SARS.

Date: September 19, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *ar15o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22820 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities—SARS.

Date: September 22, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ar15o@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious disease Research Opportunities—SARS.

Date: September 23, 2003

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496,2550, *ar15o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22821 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions

set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 21–23, 2003.

Closed: September 21, 2003 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: September 22, 2003, 8:30 a.m. to 11:15 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20851.

Closed: September 22, 2003, 11:15 a.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: September 22, 2003, 1:30 p.m. to 4:55 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 22, 2003, 4:55 p.m. to 5:25 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 22, 2003, 6:30 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: September 23, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22822 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, National Center for Biotechnology Information, National Library of Medicine.

Date: October 14, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22819 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: September 28–30, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: October 6–7, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Reproductive Endocrinology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 6–7, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A.Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: October 8–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *vf6n@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, General Medicine B Study Section.

Date: October 8–9, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: October 8–9, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.

Date: October 9–10, 2003.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th & M Street, NW., Washington, DC 20005.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: October 9–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: October 13–14, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Houston, 2900 Briarpark Drive, Houston, TX 77042.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–2–90.

Date: October 13–14, 2003.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: October 14, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: October 14, 2003–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: October 14–15, 2003.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section..

Date: October 15–16, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csrnih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: October 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: October 15–17, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 15–17, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, 301–435–0692, *robertlu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes in Tumor Pathogenesis.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSW 10B:Small Business:Cardiovascular Devices.

Date: October 16–17, 2003

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Berhouz Shabestari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Bioanalytical Engineering and Chemistry Panel.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892, 301–435–1780.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immunity/Host Defense.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Research: Child and Family.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspag@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Alexandra Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell . Development and Function 1.

Date: October 16–17, 2003.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *sayrem@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: October 16–17, 2003.
Time: 8:30 am to 6 pm.
Agenda: To review and evaluate grant applications.
Place: The Madison Hotel, 1155 15th Street, NW., Washington, DC 20005.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.
Date: October 16–17, 2003.
Time: 8:30 am to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Chronic Diseases Study Section,
Date: October 16–17 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (01) Neuroendocrinology, Neuroimmunology, and Behavior.
Date: October 16–17, 2003.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5168, MCS 7844, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neurosicience Integrated Review Group, Synapses, Cytoskeleton and Trafficking study Section.
Date: October 16–17 2003.
Time: 9:30 a.m. 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Central 1501 Rhode Island Avenue, NW, Washington DC 20005.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF Member Special Panel.
Date: October 16, 2003.
Time: 1 pm to 1:30 pm.
Agenda: To review and evaluate contract proposals.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Therapeutics.
Date: October 19–21, 2003.
Time: 5:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22826 Filed 9–08–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Notice of a Meeting of the NTP Board of Scientific Counselors; Correction

Please be advised that the **Federal Register** notice (68 FR, No. 165 pp. 51290–51292) published on August 26, 2003 had an errant "URL" in paragraph 5 on the "ICCEC Recommendations for Substances Nominated for Future NTP Studies". The correct URL follows.

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's recommendations were published in the **Federal Register** on July 16, 2003 (Vol. 68, No. 136, p. 42068–71). This notice is available on the Web along with supporting documents for each nomination (*http://ntp-server.niehs.nih.gov/NomPage/2003Noms.html*), or by contacting the NTP Executive Secretary (Dr. Barbara Shane, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: *shane@niehs.nih.gov*).

Plans are underway for making this meeting available for viewing on the Internet at *http://www.niehs.nih.gov/external/video.htm.*

Dated: August 27, 2003.

Samuel Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 03–22833 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1481–DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 29, 2003: Hernando County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22872 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3186–EM]

New York; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3186–EM), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: August 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York, resulting from a statewide power outage on August 14–16, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193(b)(1), Federal assistance under this declaration will be limited to up to $5 million.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chatauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saint Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22875 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 2003:

Columbiana, Mahoning, Medina, Portage, Stark, Summit, and Trumbull Counties for Public Assistance (already designated for Individual Assistance.)

Jefferson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22871 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22873 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1485–DR]

Pennsylvania; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1485–DR), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: August 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe storms, tornadoes, and flooding on July 21, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Crawford, Forest, Mercer, McKean, Venango, and Warren Counties for Public Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 03–22874 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–04]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Multiclass Securities Program Documents

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 10, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing and Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Multiclass Securities Program Documents.

OMB Control Number, if applicable: 2503–0017.

Description of the need for the information and proposed use: This information collection is required in connection with the operation of the Ginnie Mae Multiclass Securities program. Ginnie Mae's authority to guarantee multiclass instruments is contained in 306(g)(1) of the National Housing Act ("NHA") (12 U.S.C. 1721(g)(1)), which authorizes Ginnie Mae to guarantee "securities * * * based on or backed by a trust or pool composed of mortgages. * * * " Multiclass securities are backed by Ginnie Mae Single Class securities, which are backed by government insured or guaranteed mortgages. Ginnie Mae's authority to operate a Multiclass Securities program is recognized in Section 3004 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), which amended 306(g)(3) of the NHA (12 U.S.C. 1271(g)(3)) to provide Ginnie Mae with greater flexibility for the Multiclass Securities program regarding fee structure. contracting, industry consultation, and program implementation. Congress annually sets Ginnie Mae's commitment authority to guarantee mortgage-backed securities ("MBS") pursuant to 306(g)(2) of the NHA (12 U.S.C. 1271(g)(2)). Since the multiclass securities are backed by Ginnie Mae Single Class MBS, Ginnie Mae has already guaranteed the collateral for the multiclass instruments.

The Ginnie Mae Multiclass Securities Program consists of Ginnie Mae Real Estate Mortgage Investment Conduit ("REMIC") securities and Platinum securities. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae Single Class MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC and Platinum securities.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrift, savings & loans, *etc.*).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Type of information collection	Type of information collection (prepared by)	Number of participants/respondents	Frequency per year information submitted	Estimated annual frequency	Estimated average time to complete information	Estimated annual burden hours
REMIC Securities:						
Pricing Letter	Sponsor	16	10	160	0.5	50
Structured Term Sheet.	Sponsor	16	10	160	3	300
Trust Agreement	Attorney for Sponsor	16	10	160	1	100
Trust Opinion	Attorney for Sponsor	16	10	160	4	400
MX Trust Agreement	Attorney for Sponsor	16	10	160	0.16	16
MX Trust Opinion	Attorney for Sponsor	16	10	160	4	400
RR Certificate	Attorney for Sponsor	16	10	160	0.08	8
Sponsor Agreement	Attorney for Sponsor	16	10	160	0.05	5
Table of Contents	Attorney for Sponsor	16	10	160	0.33	33
Issuance Statement	Attorney for Sponsor	16	10	160	0.5	50
Tax Opinion	Attorney for Sponsor	16	10	160	4	400
Transfer Affidavit	Attorney for Sponsor	16	10	160	0.08	8
Supplemental Statement.	Attorney for Sponsor	16	10	160	1	100
Final Data Statements (attached to closing letter).	Attorney for Sponsor	16	10	160	32	3200
Accountants' Closing Letter.	Accountant	16	10	160	8	800
Accountants' OSC Letter.	Accountant	16	10	160	8	800
Structuring Data	Accountant	16	10	160	8	800
Financial Statements	Accountant	16	10	160	1	160

Type of information collection	Type of information collection (prepared by)	Number of participants/respondents	Frequency per year information submitted	Estimated annual frequency	Estimated average time to complete information	Estimated annual burden hours
Principal and Interest Factor File Specifications.	Trustee	16	10	160	16	1600
Distribution Dates and Statement.	Trustee	16	10	160	0.42	42
Term Sheet	Trustee	16	10	160	2	200
New Issue File Layout	Trustee	16	10	160	4	400
Flow of Funds	Attorney for Trustee	16	10	160	0.16	16
Trustee Receipt	Trustee Attorney	16	10	160	2	200
Data Verification Form	Trustee	16	10	160	1	160
Total				4000		16057.6
Platinum Securities:						
Deposit Agreement	Depositor	16	10	160	1	100
MBS Schedule	Depositor	16	10	160	0.16	16
New Issue File Layout	Depositor	16	10	160	4	400
Principal and Interest Factor File Specifications.	Trustee	16	10	160	16	2560
Data Verification Form	Trustee	16	10	160	1	160
Total				800		3398.4
Total Burden Hours.				4800		19456

Calculation of Burden Hours:

Participants × Frequency per Year = Estimated Annual Frequency.

Estimated Annual Frequency × Estimated Average Completion Time = Estimated Annual Burden Hours.

Status of the proposed information collection: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 2, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–22834 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–68]

Notice of Submission of Proposed Information Collection to OMB: Federally Assisted Low-Income Housing Drug Elimination Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is for the oversight of existing grants for federally assisted low-income housing owners to combat drug-related criminal activity in and around developments. No funding for new grants has been available since fiscal year 2001.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0476) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Federally Assisted Low-Income Housing Drug Elimination Grant Program.

OMB Approval Number: 2502–0476.

Form Numbers: HUD–50080–DF2B, SF–269, and SF–269–A.

Description of the Need for the Information and Its Proposed Use: The requested information is for the oversight of existing grants for federally assisted low-income housing owners to combat drug-related criminal activity in and around developments. No funding for new grants has been available since fiscal year 2001.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: Estimated number of respondents 150: Average annual responses per respondent 8; Total annual responses 1,200; Average burden per response 2.1 hours.

Total Estimated Burden Hours: 2,550.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22835 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–69]

Notice of Submission of Proposed Information Collection to OMB: Section Eight Management Assessment Program (SEMAP) Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review for extension of the current approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0215) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Section Eight Management Assessment Program (SEMAP) Certification.

OMB Approval Number: 2577–0215.

Form Numbers: HUD–52648.

Description of the Need for the Information and Its Proposed Use: The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually.

Reporting Burden: Estimated number of respondents 2,437: Average annual responses per respondent 1; Total annual responses 2,437; Average burden per response 24 hours.

Total Estimated Burden Hours: 33,184.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22836 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–70]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Housing Service Coordinator Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information will assist HUD in evaluating grant applicants for the Housing Service Coordinator Program. Information is needed to determine how well grant funds meet stated program goals and how well the public was served.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0447) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Service Coordinator Program.

OMB Approval Number: 2502–0447.

Form Numbers: HUD 92456, HUD 5008–SCMF, SF–269–A, HUD 424, HUD–424B, HUD–2880, SF–LLL, HUD 91186i, and HUD–91186–A.

Description of the Need for the Information and its Proposed Use: The requested information will assist HUD in evaluating grant applicants for the Housing Service Coordinator Program. Information is needed to determine how well grant funds meet stated program goals and how well the public was served.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: Estimated number of respondents 4,100: Average annual responses per respondent 3.5; Total annual responses 14,400; Average burden per response 3.5 hours.

Total Estimated Burden Hours: 51,100.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22837 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–71]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Homeownership Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application and progress reporting for the Public Housing HomeOwnership Program: PHAs make public housing units and other housing projects available for purchase by low-income families for use as principal residences.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0233) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Homeownership Program.

OMB Approval Number: 2502–0447.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Description of the need for the information and proposed use: Public Housing Agencies (PHAs) make available public housing units; public housing projects, and other housing units or developments owned, assisted, or operated, or otherwise acquired for purchase by low-income families for use as principal residences by such families. Families who are interested in purchasing a unit must submit applications to the PHA or purchase and resale entities (PREs). A PRE must prepare and submit to the PHA and HUD a homeownership program before the PRE may purchase any public housing units or projects. The PRE must demonstrate legal and practical capability to carry out the program, provide a written agreement that specifies the respective rights and obligations of the PRE and the PRE, the PHA must develop a homeownership program and obtain HUD approval before it can be implemented, provide supporting documentation and

additional supporting documentation for acquisition or non-public housing for homeownership. PHA applications can be submitted electronically via the Internet. PHAs will be required to maintain records and report annually on the public housing homeownership program.

Respondents: State or local government.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: 1,000 respondents, annual submission, 9.7 hours per response.

Total Estimated Burden Hours: 9,720.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22838 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–67]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0044) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202).395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Approval Number: 2502–0044.

Form Numbers: HUD–2328, HUD–92330–A, and HUD–2205–A.

Description of the Need for the Information and Its Proposed Use: This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion.

Reporting Burden: Estimated number of respondents 500: Average annual responses per respondent 1.8; Total annual responses 925; Average burden per response 5 hours.

Total Estimated Burden Hours: 5,100.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22839 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–66]

Notice of Submission of Proposed Information Collection to OMB: Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is required to disburse funds and to monitor the performance of grantees in achieving the goals and objectives of the HOPE 3 Program to create homeownership opportunities for low-income families and individuals who are first-time homebuyers.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0128) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-

mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Homeownership of Single Family Homes Program (HOPE 3).

OMB Approval Number: 2506–0128.

Form Numbers: HUD–40102–B, 40103, 40104, and 40105.

Description of the Need for the Information and Its Proposed Use: The information is required to disburse funds and to monitor the performance of grantees in achieving the goals and objectives of the HOPE 3 Program to create homeownership opportunities for low-income families and individuals who are first-time homebuyers. HUD is finalizing all HOPE 3 grants and expects the programs to be fully closed out by the end of calendar year 2005.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

Reporting Burden: Estimated number of respondents 100: Average annual responses per respondent 21; Total annual responses 2,100; Average burden per response 5 hours.

Total Estimated Burden Hours: 10,058.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22840 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–65]

Notice of Submission of Proposed Information Collection to OMB: Standardized Form for "Race and Ethnic Data Collection"

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is seeking renewal of the approval to use the standardized form for the Collection of Race and Ethnic Data. OMB issued revised standards for collecting race and ethnicity data for Federal agencies October 30, 1997. The standards apply to HUD program offices and partners that collect, maintain, and report Federal data on race and ethnicity for program administrative reporting, and civil rights compliance reporting to reflect the growing diversity of the U.S. population. The form is designed for reporting aggregate racial and ethnic data by those entities that are required to collect and report such data to HUD.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0113) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Standardized form for "Race and Ethnic Data Collection".

OMB Approval Number: 2535–0113.

Form Numbers: HUD–27061.

Description of the Need for the Information and Its Proposed Use: HUD is seeking renewal of the approval to use the standardized form for the Collection of Race and Ethnic Data. OMB issued revised standards for collecting race and ethnicity data for Federal agencies October 30, 1997. The standards apply to HUD program offices and partners that collect, maintain, and report Federal data on race and ethnicity for program administrative reporting, and civil rights compliance reporting to reflect the growing diversity of the U.S. population. The form is designed for reporting aggregate racial and ethnic data by those entities that are required to collect and report such data to HUD.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Quarterly, Other (as required by application and award documents).

Reporting Burden: This proposal will result in no significant increase in the current information collection burden. An estimation of the total number of hours needed to provide the information for each grant application is 0.01 hour (approximately one minute), however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is an estimated 11,000; 60% of response will be quarterly and 40% annually.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22841 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–64]

Notice of Submission of Proposed Information Collection to OMB: Fair Housing Initiatives Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is seeking renewal of the approval to collect information to select awardees for the Fair Housing Initiatives Program (FHIP) grant. The application requirements contain some changes from those in use since 3/2003.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0033) and should be sent to: Lauren Wittenberg,, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Program.

OMB Approval Number: 2529–0033.

Form Numbers: HUD 424, 424B, 424C, 424CB, 424CBW, HUD 2880, SF LLL, HUD 2990, 2991, 2993, 2994, 40076 FHIP.

Description of the Need for the Information and Its Proposed Use: The Information collected will assist the Department in selecting the highest-ranking applicants for the Fair Housing Initiatives Program (FHIP) grant. Information will also be included to oversee administration of the grant.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Quarterly, Other (as required by application and award documents).

Reporting Burden: Estimated number of Respondents 400: Average annual responses per respondent 3; Total annual responses 1,186; Average burden per response 40 hours.

Total Estimated Burden Hours: 48,472.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22842 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–16]

Redelegation of Authority With Respect to the Section 184 Indian Housing Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee Program to the Deputy Assistant Secretary for Native American Programs, and the Director of the Office of Loan Guarantee in the Office of Native American Programs, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Section 184 Indian Housing Loan Guarantee program is authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The purpose of the program is to provide Indian families, Indian housing authorities and tribes with access to sources of private financing. In a separate notice, the authority to administer the Section 184 Indian Housing Loan Guarantee program was delegated by the Secretary

to the Assistant Secretary for Public and Indian Housing. The Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee Program to the Deputy Assistant Secretary for Native American Programs and the Director of the Office of Loan Guarantee, in the Office of Native American Programs, Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee program under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) to the Deputy Assistant Secretary for Native American Programs and the Director of the Office of Loan Guarantee, in the Office of Native American Programs.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) the authority to issue and waive regulations; and (2) the power to sue and be sued.

Section C. Authority Revoked

The Assistant Secretary for Public and Indian Housing revokes all prior delegations pertaining to administration of the Section 184 Indian Housing Loan Guarantee program, including but not limited to the delegation of authority published on September 26, 1994 (59 FR 49124).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22845 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–30]

Redelegation of Authority for Public and Indian Housing and Supersedure of Prior Redelegation Concerning Native American Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation and supersedure of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing updates the redelegation of authority for administration of Native American housing programs to the Deputy Assistant Secretary for Native American Programs, the Office of Native American Programs (ONAP) Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation, within ONAP, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) provides housing assistance to Native Americans by means of a single block grant program. In a notice published in the **Federal Register** on October 2, 1998 (63 FR 53085), the Assistant Secretary for Public and Indian Housing redelegated, subject to certain exceptions, the authority to administer programs under NAHASDA to the Deputy Assistant Secretary for Native American Programs, the ONAP Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation, within ONAP, Office of Public and Indian Housing. The Department is now in the process of updating its delegations. This updated redelegation supersedes the 1998 redelegation of authority. This updated redelegation also supersedes the redelegations of authority published on March 1, 1994 (59 FR 9764), and May 11, 1994 (59 FR 24463). The 1994 delegations referred to the head of ONAP as the Director and that title was subsequently changed to Deputy Assistant Secretary.

Section A. Authority Redelegated

Subject to authority excepted in section C of this notice, the Assistant Secretary for Public and Indian Housing redelegates to the Deputy Assistant Secretary for Native American Programs all the Assistant Secretary's authority to administer the programs under Titles I through V of the Native American Housing Assistance and Self-Determination Act of 1996, including the authority to review plans submitted in compliance with section 102 of NAHASDA and to notify the Tribe or tribally designated entity whether the plan complies with the statutory requirements, the reasons for noncompliance and the modifications necessary to meet the requirements of section 102 of NAHASDA.

Section B. Authority Further Redelegated

The Assistant Secretary further redelegates to the ONAP Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation the authority to:

1. Conduct environmental reviews in compliance with section 105(b) of NAHASDA (25 U.S.C. 4115);

2. Execute all necessary agreements, including but not limited to grant agreements;

3. Review performance reports submitted by the Tribe or the tribally designated entity and issue reports based on such review; and

4. Any other authority necessary to carry out the purposes of Titles I through V of NAHASDA, which has not been excepted from this delegation.

Section C. Authority Excepted

The authority redelegated under section A and section B does not include (1) the authority to issue and waive regulations; (2) the authority to waive the requirement for submitting the plan as set forth in section 101(b)(2) of NAHASDA (25 U.S.C. 4116); (3) the authority to require replacement of a tribally designated housing entity pursuant to section 402 of NAHASDA (25 U.S.C. 4162); or (4) the authority to effect remedies for noncompliance requiring notice and opportunity for a hearing.

Section D. Authority To Further Redelegate

The authority delegated in section B, subject to the exceptions in section C may be redelegated to employees of the Department in accordance with a written delegation.

Section E. Authority Revoked

This delegation revokes and supersedes the redelegations of authority published on October 2, 1998 (63 FR 53085), March 1, 1994 (59 FR 9764), and May 11, 1994 (59 FR 24463).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22846 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–31]

Redelegation of Authority for the Title VI Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Title VI Loan Guarantee Program to the Director, Office of Loan Guarantee Program in the Office of Native American Programs of the Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Title VI Loan Guarantee Program is authorized under Title VI of the Native American Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The program seeks to provide innovative ways to enhance economic growth, increase access to private capital, and encourage investment and participation of financial institutions on Indian reservations and other Native American areas. To that end, the Title VI Loan Guarantee program assists Indian Housing Block Grant recipients who want to finance eligible affordable housing activities, but are unable to secure financing without the assistance of a federal guarantee. This notice redelegates the authority to administer the Title VI Loan Guarantee program to the Director of the Office of Loan Guarantee Program in the Office of Native American Programs of the Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates authority and power with respect to the Title VI Loan Guarantee program to the Director, Office of Loan Guarantee, in the Office of Native American Programs of the Office of Public and Indian Housing.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) The authority to issue or waive regulations; (2) the authority to sue and be sued; or (3) the authority to effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22847 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–32]

Notice of Revocation and Redelegation of Authority for Indian and Alaska Native Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This notice revokes prior redelegations of authority from the Assistant Secretary for Public and Indian Housing with respect to the administration of programs, under the authority of the Assistant Secretary, for Indians and Alaska Natives, to the Deputy Director for Headquarters Operations, and the Deputy for Field Operations, Office of Native American Programs (ONAP), within the Office of Public and Indian Housing, and then redelegates this authority to the Director of the Office of Grants Evaluation and the Director of the Office Grants Management, both within ONAP, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on March 1, 1994 (59 FR 9765), the Assistant Secretary for Public and Indian Housing revoked all authority previously redelegated for the administration of HUD programs for Indians and Alaska Natives, under the jurisdiction of the Assistant Secretary for Public and Indian Housing, and then redelegated that authority to the Deputy Director for Headquarters Operations, and the Deputy for Field Operations, ONAP, within the Office of Public and Indian Housing.

This notice revokes all authority redelegated to the Deputy Director for Headquarters Operations and the Deputy for Field Operations, and redelegates the authority of the Assistant Secretary for Public and Indian Housing to administer HUD programs for Indians and Alaska Natives to the Director of the Office of Grants Evaluation and the Director of the Office of Grants Management, both offices within the Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates to the Director of the Office of Grants Evaluation and the Director of the Office Grants Management, within the Office of Public and Indian Housing, all authority to administer HUD programs for Indians and Alaska Natives, under the jurisdiction of the Assistant Secretary.

Section B. Authority Excepted

The authority redelegated under section A does not include: (1) The authority to issue or waive regulations; (2) the authority to sue and be sued; or (3) the authority to effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing.

Section C. Revocation and Supersedure

This redelegation revokes and supersedes all prior redelegations of authority from the Assistant Secretary for Public and Indian Housing with respect to the administration of Indian and Alaska Native programs, under the jurisdiction of the Assistant Secretary for Public and Indian Housing. Among the redelegations revoked, or revoked in part, are:

1. The redelegation of authority published on March 1, 1994 (59 FR 9765);

2. The redelegation of authority published on April 10, 1992 (57 FR 12516), with respect to Indian Housing Authorities only;

3. The redelegation of authority published on November 5, 1991 (56 FR 56524), with respect to Indian Housing Authorities only;

4. The redelegation of authority published on August 1, 1986 (51 FR 27604).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22848 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–11]

Redelegation of Authority for Rural Housing and Economic Development Grants Awarded to Indian Tribes and Tribal Entities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to the Deputy Assistant Secretary for Native American Programs in the Office of Native American Programs (ONAP) of the Office of Public and Indian Housing, the Director of the Denver ONAP Office of Grants Management, and the Director of the Denver ONAP Office of Grants Evaluation, the authority to administer Rural Housing and Economic Development grants awarded to Indian Tribes and tribal entities.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development (RHED) program provides funding to Indian tribes, state housing finance agencies, state community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas. The program is authorized in annual HUD appropriations acts and was originally authorized in the Fiscal Year (FY) 1998 HUD Appropriation Act (Pub. L. 105–65, 111 Stat. 1344, 1357, approved October 27, 1997). The RHED program is administered by the Assistant Secretary for Community Planning and Development. However, because of the unique relationship between the Office of Public and Indian Housing and Indian tribes, the Secretary delegated to the Assistant Secretary for Public and Indian Housing the authority to administer RHED grants awarded to Indian tribes and tribal entities by the Assistant Secretary for Community Planning and Development.

This notice redelegates the authority to administer RHED grants from the Assistant Secretary for Public and Indian Housing to the Deputy Assistant Secretary for Native American Programs, the Director of the Denver ONAP Office of Grants Management, and the Director of the Denver ONAP Office of Grants Evaluation.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the authority to administer RHED grants awarded to Indian Tribes and tribal entities to the Deputy Assistant Secretary for Native American Programs, and the Director, Denver ONAP Office of Grants Management, and the Director, Denver ONAP Office of Grants Evaluation in the Office of Native American Programs.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) The authority to issue and waive regulations; and (2) the authority to sue and be sued.

Section C. Authority Revoked

The Assistant Secretary for Public and Indian Housing revokes all prior delegations pertaining to RHED grants awarded to Indian Tribes and tribal entities, including but not limited to, the delegation of authority published on September 28, 1999 (64 FR 52340).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22844 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406 (Advisory Opinion Proceedings II)]

In the Matter of Certain Lens-Fitted Film Packages; Notice of Commission Determination To Institute Advisory Opinion Proceedings and To Deny a Request for Institution of Enforcement Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute advisory opinion proceedings in the above-captioned investigation, and to deny a request for institution of enforcement proceedings.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3012. Copies of the request for an advisory opinion, and all other nonconfidential documents filed in connection with the request, 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. 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) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. ("Fuji") of Tokyo, Japan, alleging unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, by several respondents in the importation and sale of certain lens-fitted film packages (*i.e.*, disposable cameras) (LFFPs) that infringed one or more claims of 15 U.S. patents held by

complainant Fuji. On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by 26 respondents by reason of importation or sales after importation of LFFPs that were found to infringe one or more claims of the patents in issue. 64 FR 30,541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, including claim 1 of U.S. Patent 4,954,857 ("the '857 patent"); claim 1 of U.S. Patent 4,972,649 ("the '649 patent"); claim 25 of U.S. Patent 5,381,200 ("the '200 patent"); and claim 1 of U.S. Patent Re 34,168 ("the '168 reissue patent"). CS Industries Inc. ("CSI") was not a party to the original investigation.

On July 31, 2001, the Commission instituted formal enforcement and advisory opinion proceedings at Fuji's request. 66 FR 40,721 (Aug. 3, 2001). CSI was named as a party respondent to the enforcement proceeding, and was also named as a party to the advisory opinion proceedings. 66 FR 40,721 (Aug. 3, 2001). On May 2, 2002, the presiding administrative law judge ("ALJ") issued his enforcement initial determination ("EID") and his initial advisory opinion ("IAO"). The Commission reviewed the EID and the IAO in part and remanded the issue of infringement of claim 9 of the '649 patent under the doctrine of equivalents to the ALJ in light of Supreme Court precedent handed down after the EID and the IAO were issued. 67 FR 52,741 (Aug. 13, 2002). The Commission also directed interested parties to file comments on the recommended remedy determinations made by the ALJ in the EID. 67 FR 52,741 (Aug. 13, 2002). On May 15, 2003, the Commission determined not to review the ALJ's supplemental IAO and EID, which issued on October 24, 2002. 68 FR 28,254 (May 23, 2003). The Commission also issued cease and desist orders against several respondents, including CSI, that were found to have violated the general exclusion order issued in the original investigation. 68 FR 28,254 (May 23, 2003).

On June 19, 2003, CSI filed a request pursuant to Commission rule 210.79 for an advisory opinion. On June 30, 2003, complainant Fuji and the Commission investigative attorney ("IA") filed responses. Fuji's response included a request for initiation of an enforcement proceeding pursuant to Commission rule 210.75. On July 8, 2003, the IA filed a motion for leave to respond to Fuji's request for an enforcement proceeding with attached response. On July 9, 2003, CSI filed a motion for leave to reply to the responses of Fuji and the IA with attached reply, and a response to Fuji's request for an enforcement proceeding. The Commission granted both motions for leave.

The Commission examined CSI's request for an advisory opinion, and the responses and reply thereto, and determined that the request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79(a). The Commission examined Fuji's request for an enforcement proceeding and the responses thereto, and determined to deny the request. Accordingly, the Commission determined to institute an advisory opinion proceeding and referred CSI's request to the presiding ALJ for issuance of an initial advisory opinion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rules 210.75(a) and 210.79(a), 19 CFR 210.75(a), 210.79(a).

Issued: September 3, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22895 Filed 9–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY: Parole Commission, Department of Justice.

TIME AND DATE: 9:30 a.m., Thursday, September 11, 2003.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: September 4, 2003.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–22984 Filed 9–5–03; 10:00 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Gamma Radiation Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 57.5047; Gamma Radiation Exposure Records.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 103(c) of the Federal Mine Safety and Health Act of 1977, the Mine Safety and Health Administration (MSHA) is required to "* * * issue regulations required operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act."

Gamma radiation occurs anywhere that radioactive materials are present, and has been associated with lunch cancer and other debilitating occupational diseases. Gamma radiation hazards may be found near radiation sources at surface operations using X-ray machines, weightometers, nuclear and diffraction units.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

Annual gamma radiation surveys are required to be conducted—in all underground mines where radioactive ores are mined. Where the average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, all persons affected are to be provided with gamma radiation dosimeters and records of cumulative individual gamma radiation exposures be kept.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039.

Recordkeeping: Records of cummulative occupational radiation exposures aid in the protection of workers, in the control of subsequent radiation exposure, and are used by MSHA in evaluation of the effectiveness of the protection program in demonstrating compliance with regulatory requirements.

Frequency: Annually.

Affected Public: Business or other for-profit.

Respondents: 2.

Average Time Per Respondent: 1 hour.

Total Burden Hours: 2 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of September, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–22897 Filed 9–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 49.2 through 49.4, 49.6 through 49.9, 75.1713–1, and 77.1702; Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer diskette, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 (e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) required the Secretary of Labor (Secretary) to publish proposed regulations which provide that mine rescue teams be available for rescue and recovery work to each underground mine in the event of an emergency. In addition, the costs of making advance arrangements for such teams are to be borne by the operator of each such mine.

Congress considered the ready availability of mine rescue in the event of an accident to be vital protection for miners. Congress was concerned that too often in the past, rescue efforts at a disaster site have had to await the delayed arrival of skilled mine rescue teams. In responding to Congressional concerns, the Mine Safety and Health Administration (MSHA) promulgated 30 CFR Part 49, Mine Rescue Teams. The regulations set standards related to the

availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

Under 30 CFR part 49, Mine Rescue Teams, the regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates. Parts 75 and 77 requires that coal mine operators make arrangements with a licensed physician, medical service, medical clinic, or hospital and with an ambulance service to provide 24-hour emergency medical assistance and transportation. That information is to be posted at the mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Recordkeeping: Section 49.6 states that rescue apparatus and equipment shall be maintained and that a person trained in the use and care of breathing apparatus shall inspect and test the apparatus at lease every 30 days and shall certify by signature and date that the inspections and tests were done. The certification and the record of corrective action taken, if any, shall be maintained at the mine rescue station for a period of one year. Section 49.7 requires that each team member and alternate be examined within 60 days of the beginning of the initial training, and annually thereafter by a physician who shall certify the physical fitness of the team member to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The operator shall have MSHA Form 5000–3 on file for each team member. These forms shall be kept on file at either the mine or the mine rescue station for a period of one year. Section 49.8 requires that prior to serving on a mine rescue team, each member must complete an initial 20-hour course of instruction and all team members are required to receive 40 hours of refresher training annually. A record of the training received by each mine rescue team member is required to be on file at the mine rescue station for a period of one year.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Average Time Per Respondent: 33 minutes.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $561K.

SUMMARY OF ESTIMATED BURDEN HOURS AND BURDEN COST

Standard	Annual responses	Hour burden	Hour burden cost
49.2:			
Coal	117	117	$6,426
MNM	31	31	1,393
49.3 and 49.4:			
Coal	2	4	220
MNM	11	22	988
49.6:			
Coal	14,868	4,510	187,165
MNM	14,904	4,521	146,345
49.7:			
Coal	826	3,511	148,484
MNM	828	3,519	116,510
49.8:			
Coal	7,694	4,226	232,092
MNM	7,756	4,631	208,071
49.9:			
Coal	117	233	12,796
MNM	31	62	2,786
75.1713–1	117	233	12,796
77.1702	166	332	18,233
Totals	47,468	25,952	$1,094,305

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia this 2nd day of September, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–22898 Filed 9–8–03; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet September 15, 2003 from 1:30 p.m. until conclusion of the Board's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of June 27 & 28, 2003.
3. Approval of the minutes of the Executive Session of the Board's meeting of June 28, 2003.
4. Approval of the minutes of the Board's Annual Performance Reviews Committee meeting of June 27, 2003.
5. Recognition of the Friends of the Legal Services Corporation's Board of Directors.
6. Chairman's Report.
7. Members' Reports.
8. Acting Inspector General's Report.
9. President's Report.
10. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
11. Consider and act on the report of the Board's Operations & Regulations Committee.
12. Consider and act on the report of the Board's Finance Committee.
13. Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.
14. Report by Mauricio Vivero, LSC Vice President for Governmental Relations & Public Affairs, on LSC's High-tech Corporate Advisory Board and Corporate Sponsorship.
15. Consider and act on six-month contract extensions for LSC Vice Presidents Randi Youells, Mauricio Vivero, and Victor Fortuno.
16. Consider and act on other business.
17. Public comment.
18. Consider and act on whether to authorize an executive session of the Board to receive a briefing by the Acting Inspector General on the activities of the Office of the Inspector General and to consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Closed Session

19. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
20. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

21. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23119 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation Board of Directors will meet on September 15, 2003. The meeting will begin at 9:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the *Committee's* meeting of June 27, 2003.
3. Report on LSC's *Consolidated Operating Budget (COB), Expenses, and Other Funds Available through July 31, 2003.*
4. Report on LSC's budget projected operating expenses for April 1–June 30, 2003.
5. Consider and act on proposed *Internal Budgetary Adjustments and COB Reallocations for April 1–June 30, 2003.*
6. Report on LSC's budget projected operating expenses for July 1–September 30, 2003.
7. Consider and act on proposed *Internal Budgetary Adjustments and COB Reallocations for July 1–September 30, 2003.*
8. Consider and act on LSC's FY 2004 *Temporary Operating Budget.*
9. Public comment on LSC's FY 2005 Budget Mark.
10. LSC's Management recommendation on LSC's FY 2005 Budget Mark.
11. Consider and act on LSC's FY 2005 Budget Mark.
12. Consider and act on fixing the LSC President's salary to Level V of the Federal Government's Executive Schedule, thereby allowing the President's salary to adjust automatically as Level V adjusts.
13. Consider and act on other business.
14. Public comment.
15. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting

may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23120 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations & Regulations Committee of the Legal Services Corporation Board of Directors will meet on September 14, 2003. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of June 27, 2003.
3. Staff report on the responsibilities of LSC's Office of Compliance & Enforcement.
4. Staff reports on:

(a) LSC open rulemakings: 45 CFR parts 1604 (Outside Practice of Law); 1611 (Financial Eligibility); and 1626 (Alien Eligibility);

(b) Potential new rulemakings;

(c) Priorities for rulemakings; and

(d) Timeline for open and proposed rulemakings.

5. Public comment regarding:

(a) Status (as opposed to merits) of open rulemakings;

(b) Potential new rulemakings;

(c) Priorities for rulemakings; and

(d) Timeline for open and potential rulemakings.

6. Consider and act on open rulemakings.
7. Consider and act on potential new rulemakings.
8. Consider and act on priorities for rulemakings.
9. Consider and act on a timeline for open and proposed rulemakings.
10. Consider and act on a new Grant Assurance for 2004 regarding attorneys' fees in property recovery actions.
11. Other public comment.
12. Consider and act on other business.
13. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23121 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on September 14, 2003. The meeting will begin at 10:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of June 27, 2003.
3. Short Presentations on the Critical Issues and Challenges Facing the National Legal Services Delivery System and the Clients Served by Legal Services Programs:

- Alan Houseman, Center for Law & Social Policy (CLASP); Don Saunders and Teresa Cosby, National Legal Aid & Defender Association (NLADA).
- Lisa Oshiro, Native American Indian Legal Services (NAILS).
- Wayne Moore, American Association of Retired Persons (AARP).
- Susan Patnode, Rural Network.
- Sarah Singleton, ABA Standing Committee on Legal Aid & Indigent Defendants (SCLAID).
- Lillian Johnson and Don Isaac, African-American Project Directors Association (AAPDA).
- Faith Rivers, National Association of IOLTA Providers (NAIP).
- Luis Jaramillo, Farmworker Project Group.

4. Consider and act on other business.
5. Public comment.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23122 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for LSC President and Inspector General

TIME AND DATE: The Search Committee for LSC President and Inspector General of the Legal Services Corporation's Board of Directors will meet on September 15, 2003. The meeting will begin at 11 a.m. and continue until conclusion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of August 6, 2003.
3. Consider and act on qualifications for the position of LSC President.
4. Consider and act on the process for the selection of an LSC President, including, but not limited to the scheduling of candidate interviews and changes to the Committee's aspirational timeline.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23123 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–101)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that the Nova-Tech Engineering, Inc., of Mountlake Terrace, Washington, has applied for a co-exclusive license to practice the invention disclosed in NASA Case No. MFS–30122–1 entitled "Auto-Adjustable Pin Tool For Friction Stir Welding." Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

Dated. August 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–22906 Filed 9–8–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–102)]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register.**

The performance review function for the SES in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator and members of the PRB. The following individuals are serving on the Board and the Committee:

Performance Review Board

Chairperson, Associate Administrator for Earth Science, NASA Headquarters

Executive Secretary, Senior Executive Advisor, Office of Human Resources, NASA Headquarters

Director, Personnel Division, NASA Headquarters

Deputy General Counsel, NASA Headquarters

Deputy Assistant Administrator for Equal Opportunity Programs, NASA Headquarters

Deputy Associate Administrator for Space Science, NASA Headquarters

Deputy Associate Administrator for Earth Science, NASA Headquarters

Deputy Associate Administrator for Space Flight, NASA Headquarters

Deputy Associate Administrator for Education, NASA Headquarters

Deputy Associate Administrator for Safety and Mission Assurance, NASA Headquarters

Director, Research Support Division, Office of Aerospace Technology, NASA Headquarters

Deputy Associate Administrator (Science) for Biological and Physical Research, NASA Headquarters

Associate Director (Management), NASA Johnson Space Center

Deputy Center Director, NASA Glenn Research Center

Deputy Center Director, NASA Ames Research Center

Deputy Center Director, NASA Kennedy Space Center

Senior Executive Committee

Chairperson, Associate Deputy Administrator for Institutions and Asset Management, NASA Headquarters

Executive Secretary, Director, Personnel Division, NASA Headquarters

Associate Administrator for Biological and Physical Research, NASA Headquarters

Associate Administrator for Earth Science, NASA Headquarters

Assistant Administrator for Human Resources, NASA Headquarters

Sean O'Keefe,

Administrator.

[FR Doc. 03–22939 Filed 9–8–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Advanced Computational Infrastructure & Research (1185); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Advanced Computational Infrastructure & Research (#1185).

Date & Time:

September 18, 2003; 8 a.m.–5 p.m.

September 19, 2003; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–8963, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To perform a reverse site visit to review and provide advice and recommendations on plans and progress reports for NPACI, NCSA and PSC as part of the PACI activity.

Agenda: To review and evaluate annual reports and program plans.

Reason for Late Notice: Unforeseen administrative complications.

Dated: September 3, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–22851 Filed 9–8–03; 8:45 am]

BILLING CODE 7555–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT), September 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED

Parts Open to the Public

9 a.m. (EDT) Convene meeting.

1. Approval of minutes of the August 18, 2003, Board meeting.
2. Thrift Savings Plan report by the Executive Director.
a. Loan procedures
b. Lifestyle funds
c. ETAC
d. Investment returns
3. Audits.
4. Approval of the FY 2004 Budget and FY 2005 Estimates.

Parts Closed to the Public

5. Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 5, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–23016 Filed 9–5–03; 11:47 am]

BILLING CODE 6760–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1748, Final Report]

Environmental Review Guidance for Licensing Actions Associated With NMSS Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Final Report.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the final report "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG–1748). This document provides guidance for the planning and implementation of National Environmental Policy Act requirements for activities performed in the Office of Nuclear Materials Safety and Safeguards (NMSS). Public comments were solicited as noticed in the **Federal Register** on October 18, 2001 (66 FR 52951) and again on May 29, 2002 (67 FR 37461).

ADDRESSES: NUREG–1748 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC Web Site, *http://www.nrc.gov* (the Electronic Reading Room). For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 301–415–4737 or toll free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Matthew Blevins, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–7684, e-mail: *mxb6@nrc.gov.*

SUPPLEMENTARY INFORMATION: This guidance document, NUREG–1748, provides general procedures for the environmental review of licensing actions regulated by NMSS. Although the main focus of this guidance is the NRC staff's environmental review process, it also contains related information which applicants and licensees may find useful. Chapter 1 provides a summary and overview of the guidance. This chapter briefly discusses the three ways in which an environmental review is performed, either by meeting the criteria for a categorical exclusion or by preparing an environmental assessment (EA) or environmental impact statement (EIS). This chapter also discusses early planning for an EA or EIS and methods of using previous environmental analyses related to the proposed action. Chapter 2 discusses the categorical exclusions and the basis of their use. Chapter 3 discusses the EA process, including preparation and content of the EA, and preparation of the Finding of No Significant Impact. Chapter 4 discusses the process of preparing an EIS, from developing a project plan through scoping, consultations and public meetings, to preparing the Record of Decision. Chapter 5 discusses the technical content of the EIS, and Chapter 6 discusses environmental information that should be considered by applicants and licensees in preparing their environmental report.

Dated at Rockville, Maryland, this 22nd day of August 2003.

For the Nuclear Regulatory Commission.

Scott Flanders,

Chief, Environmental and Low-Level Waste Section, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–22876 Filed 9–8–03; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Public Health Service Hospital, The Presidio of San Francisco (Presidio), California; Combined Notice To Initiate Public Scoping and Prepare an Environmental Assessment

ACTION: Notice is given, in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), that the Presidio Trust (Trust) is proposing to rehabilitate and reuse historic buildings in the Public Health Service Hospital district (PHSH district or the district) of the Presidio of San Francisco (project). The project also includes the possibility of demolition and limited new replacement construction to accomplish the rehabilitation and reuse of the district's historic buildings. The Trust is commencing preparation of a project-specific environmental assessment (EA), and is inviting the participation of the public and interested agencies as part of the scoping process for the EA.

SUMMARY: The project is an important component of the Presidio Trust Management Plan (PTMP), the Trust's comprehensive land use plan and policy framework for Area B of the Presidio, adopted in August 2002. In the PTMP, the PHSH district was identified as an area for reuse as a residential and educational community. Its centerpiece would be the rehabilitation and reuse of the historic Public Health Service Hospital (PHSH or Building 1801) and of the other historic structures in the district. Future consideration would be given to demolition and new replacement construction up to specified limits.

The district includes the PHSH and its complex of nearby dormitories, offices, residences and recreational buildings on the lower plateau, possibly Battery Caulfield on the upper plateau at the north end of the district, and several outlying building premises. The project is needed to arrest the physical deterioration of the buildings, protect the National Historic Landmark District and rehabilitate the district's structures consistent with the Secretary of Interior's Standards; improve the appearance and vitality of some or all of the district; reuse the buildings consistently with the PTMP land use options; and generate revenue for the long-term operation and improvement of the Presidio. In connection with the project, the Trust will adopt planning and design guidelines, approve a development agreement and lease for buildings and premises within the district, approve associated building

and district improvements, and make conforming changes to the PTMP, if any are required.

Building space within the district totals approximately 400,000 square feet (sf). Building 1801 includes a historic structure of approximately 173,000 sf and non-historic additions (or "wings") totaling approximately 124,700 sf. Pursuant to draft planning and design guidelines, non-historic portions of the hospital building may be removed. Although not required, replacement construction up to an amount equivalent to the square footage removed, not to exceed 130,000 sf, may be considered within the district.

Proposed Alternatives

The following four project alternatives are being considered for evaluation in the EA. These include a "no action" alternative required by the NEPA, which in this case will constitute the land use scenario analyzed in the PTMP EIS. Three action alternatives, each with differences in the treatment of Building 1801 and in the proposed amount and location of demolition and new replacement construction, will also be evaluated. The Trust's selected action at the conclusion of the environmental review process may combine various elements of the alternatives, or fall within the range they represent.

Alternative 1: Rehabilitation/No New Construction (PTMP or No Action Alternative)—This alternative would rehabilitate buildings within the PHSH district to accommodate residential (*i.e.*, a mix of senior housing/assisted living and market rate housing) and educational uses. No building demolition or replacement construction would occur, and therefore the existing total building area of 400,000 sf would be maintained. The historic concentration of development would be retained on the lower plateau (*i.e.*, the PHSH complex). The three-acre Battery Caulfield site, on the northern end of the district on the upper plateau, would remain in the short term as a Trust maintenance/corporation yard. The historic portion of Building 1801 and its non-historic additions (including the seven-story end wings and large one-story connector in front of the original main entry) would be rehabilitated for residential use (approximately 200 units) together with the historic housing on Wyman Terrace (approximately 11 units). Other ancillary buildings in the district would be rehabilitated for a variety of educational and supporting uses. Outlying buildings (Buildings 1450, 1818 and 1819) would remain as Trust maintenance facilities.

Alternative 2: Rehabilitation/Infill Construction—This alternative would rehabilitate historic buildings within the PHSH district, and would concentrate development on the lower plateau primarily for residential use (between 300 and 390 units total). Both the historic portion and non-historic wings of Building 1801 would be rehabilitated. Approximately 17,000 sf of non-historic buildings, including the front connector and the two-story additions at the rear of Building 1801, would be removed and replaced with an equivalent amount of compatible infill construction at locations on the lower plateau that conform to the draft planning and design guidelines. No new buildings would be constructed on the Battery Caulfield site, which would remain in the short term as a Trust maintenance/corporation yard. This alternative may also include a new underground parking facility beneath Building 1801 to increase landscaped open space on the lower plateau.

Alternative 3: Rehabilitation/Demolition—This alternative would rehabilitate historic buildings within the PHSH district, remove the wings of Building 1801, and provide no replacement construction at Battery Caulfield or elsewhere within the district. Total square footage in the district would decrease to approximately 275,000 sf. Buildings would be rehabilitated primarily for residential use (between 210 and 230 units total). The Battery Caulfield site would remain in the short term as a Trust maintenance/corporation yard, and outlying buildings would remain as Trust maintenance facilities.

Alternative 4: Rehabilitation/Relocated Construction—This alternative would rehabilitate historic buildings within the PHSH district, remove the non-historic wings and provide for replacement construction within the Battery Caulfield site primarily for residential uses. Several non-historic buildings including the wings and connector in front of Building 1801, the addition to Building 1802, and Building 1803 would be removed and replaced with an equivalent amount of compatible new residential construction (up to 125 units, not to exceed approximately 115,000 sf) within the lower plateau and within Battery Caulfield (approximately 90 units) for a total of 300 to 350 residential units.

Proposed Scoping and Environmental Review

The EA will tier from the PTMP Environmental Impact Statement (EIS) by incorporating by reference, as appropriate, the information and analysis in the PTMP EIS, and will focus the EA on issues specific to each proposed project alternative. The Trust encourages all interested individuals, organizations and agencies to provide comments on the nature and extent of issues, potential impacts and alternatives to be addressed in the EA. As part of the scoping process, the Trust will conduct a public Trust Board meeting in October or November, at a time and location to be announced, at which the Trust Board will accept oral scoping comments from the public on the proposed action described herein, the alternatives to be studied under the NEPA, and the scope of the EA. For those unable to attend this meeting, an information packet is available upon request (see Contact information below). The Trust will provide informal information updates and notices concerning the project through postings on its Web site at *www.presidio.gov*, or through its bi-monthly publication, the Presidio Post. The Trust will announce the release of the EA by notice in the Presidio Post, as well as via direct mailing and other means. At this time, it is expected that the EA will be available for public review in January 2004.

Contact

To request the information packet, provide comments or obtain information on meeting locations, please contact John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052 (fax: 415/561–2790) or *phsh@presidiotrust.gov*. NEPA scoping comments must be postmarked or transmitted not later than November 26, 2003.

Dated: September 2, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–22886 Filed 9–8–03; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48428; File No. SR–CHX–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc., Relating to Membership Dues and Fees

September 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the CHX has prepared. On August 22, 2003, the CHX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, has been filed by Phlx under Rule 19b–4(f)(2) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective August 1, 2003, to (1) modify the Fee Schedule by reducing transaction fees for executions through floor brokers (and market makers) that exceed specific thresholds, while eliminating the caps previously associated with those transaction fees; (2) re-bill fees associated with the use of the NYFIX system[5] that exceed $15,000 each month to floor brokers, based on their use of the system; and (3) modify the floor broker earned credit program to permit floor brokers to receive additional earned credits if certain events occur.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

MEMBERSHIP DUES AND FEES

* * * * *

F. Transaction and Order Processing Fees

1.–3.(No change to text)

4. Transaction Fees

a.–d.(No change to text).

e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker executions. $.0025 per share (up to a maximum of $100 per side), *subject to the fee reduction described in (i), below.*

f. In Dual Trading System issues, agency executions executed through a floor broker and market maker executions. $.0035 per share (up to a maximum of $100 per side). *subject to the fee reduction described in (i), below.*

g. (No change to text)

h. [Effective January 1, 2003,] The monthly maximum[s] for *transaction* fees *for orders sent via MAX is $10,000 or, if less, $.40 per 100 average monthly gross round lot shares.*

[(1) Maximum monthly transaction fees for orders via MAX] [$10,000]

[(2) Maximum monthly transaction fee for transactions in NASDAQ/NMS Securities (other than transactions included in (1) above)] [$110,000]

[(3) Maximum monthly transaction fee for transactions in Dual Trading System Securities (other than transactions included in (1) above)] [$110,000]

[(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or $.40 per 100 average monthly gross round lot shares.]

i. *Effective August 1, 2003, the per-share fees described in (e) and (f) above will be reduced on shares traded above a total monthly charge of $150,000 (within each section) as follows:*

Fees are reduced by 25% on additional shares traded that would otherwise generate a total monthly charge above $150,000 and below $200,000;

Fees are reduced by 50% on additional shares traded that would otherwise generate a total monthly charge at or above $200,000 and below $250,000; and

Fees are reduced by 75% on additional shares traded that would otherwise generate a total monthly charge at or above $250,000.

* * * * * * *

H. EQUIPMENT, INFORMATION SERVICES AND TECHNOLOGY CHARGES

* * * * * * *

NYFIX Network and Connection Charges — *All NYFIX charges above $15,000 per month will be re-billed monthly to member firms that access the NYFIX network, based on the proportion of each firm's use of the network during the month.*

* * * * * * *

M. Credits

1. (No change to text)

2. Floor Broker Credits

a. Earned Credits. Total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

Earned Credit—Average Daily Billable Shares × Average Rate per Billable Share × Credit Percentage × 8.

In calculating the above Earned Credit, the following definitions shall apply:

"Average Daily Billable Shares" means, for a given month, (i) Total Billable Shares in Month divided by (ii) Total Trading Days in Month.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the CHX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] 17 CFR 240.19b–4(f)(2). For purposes of calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 22, 2003, the date CHX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[5] NYFIX USA, LLC provides equipment, software and network services that route orders among subscribers to the system and that help subscribers manage the orders they receive.

H. EQUIPMENT, INFORMATION SERVICES AND TECHNOLOGY CHARGES—Continued

"Total Billable Shares in Month" means, for a given month, the total number of shares executed on the Exchange by the floor broker for which the Exchange received a transaction fee. Any share executed for which the Exchange did not receive a transaction fee shall not be considered a billable share.

"Total Trading Days in Month" means, for a given month, the number of business days that the Exchange was open for business during the month. Days in which the Exchange closes early, due to a holiday or otherwise, shall nonetheless be considered a day that the Exchange is open for business.

"Average Rate per Billable Share" means, for a given month, (i) the total dollar amount of transaction fees received by the Exchange for trades executed on the Exchange by the floor broker divided by (ii) Total Billable Shares in Month.

"Credit Percentage" means the applicable percentage taken from the following table:

Average Daily Billable Shares	0–49,999	50,000–99,999	100,000–499,999	500,000 shares or more.
Average Rate per Billable Share ..... Less than $.0040	20%	30%	40%	50%
$.0040–$.0055	40%	45%	60%	75%
Greater than $.0055	40%	60%	80%	100%

In any month that the Exchange's Total Billable Shares in Month for all floor brokers exceeds the Exchange's monthly average billable shares for all floor brokers for the first quarter of 2003, the Exchange will distribute 50% of the incremental transaction fee revenue received by the Exchange resulting from that increase in the number of billable shares (the "Additional Revenue"). The Additional Revenue will be distributed to each floor broker in proportion to the floor broker's share of that month's incremental increase in billable shares. (Effective August 1, 2003)

The Earned Credit *(together with any Additional Revenue)* calculated above for each floor broker shall be decreased by an amount equal to that floor broker's "Credit Reduction Charge," which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) × *Exchange Baseline* [$50,000] = Floor Broker's Credit Reduction Charge.

The "Exchange Baseline" means, for a given month, $50,000 less any additional revenues (up to $50,000) realized by the Exchange as a result of the elimination of the monthly caps in August 2003 (SR–CHX–2003–22).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the CHX Fee Schedule in several ways. First, the proposal revises the Exchange's fees for agency transactions executed through floor brokers in both over-the-counter ("OTC") and listed securities by reducing transaction fees for executions that exceed specific thresholds and eliminating the caps associated with those fees.[6] Specifically, the proposal reduces the per share fees on shares traded above a total monthly charge of $150,000 by the following percentages: (1) 25% on additional shares traded that would otherwise generate a total monthly charge above $150,000 and below $200,000; (2) 50% on additional shares traded that would otherwise generate a total monthly charge at or above $200,000 and below $250,000; and (3) 75% on additional shares traded that would otherwise generate a total monthly charge at or above $250,000. At the same time, the Exchange is eliminating the caps that were previously associated with these transaction fees.[7]

Another change to the Fee Schedule allows the Exchange to re-bill its floor brokers a portion of the network and connection costs associated with providing access to the NYFIX system, which can be used to deliver orders to the trading floor for handling by CHX floor brokers. The Exchange will pay the first $15,000 each month associated with the use of this system. The Exchange's floor brokers will be assessed any remaining costs, based on the proportion of each firm's use of the network during the month.

Finally, the proposal modifies the floor broker earned credit program to permit floor brokers to receive additional earned credits if either (a) the number of overall billable shares executed by floor brokers at the Exchange increases in a month over the average number of billable shares executed in a month by floor brokers at the Exchange in the first quarter of 2003 or (b) the Exchange recognizes additional revenues from the changes it has made to its transaction fee schedule as part of this submission. If the number of overall billable shares executed by floor brokers reaches the threshold described above (*i.e.*, it exceeds the average number of billable shares executed by floor brokers during a month in the first quarter of 2003), the Exchange will distribute 50% of the incremental transaction fee revenue that results from that increase in the number of billable shares.[8] In addition, if the Exchange recognizes additional transaction fee revenues in a particular month as the result of the transaction fee changes it has made in this submission, those revenues will be used to reduce the "credit reduction charge" that now serves to decrease the earned credits available to floor brokers.[9]

All of these fee changes took effect August 1, 2003. Among other things, the fee changes are designed ultimately to increase the Exchange's trading volume in securities traded by its floor brokers and to increase the Exchange's revenues. The Exchange believes that these changes reflect a reasonable allocation of dues, fees and other

[6] This proposed rule change also affects the fees charged to market makers for their executions on the Exchange.

[7] The Exchange previously had separate $110,000 per month caps on transaction fees generated through orders executed, other than through the Midwest Automated Execution System ("MAX") in OTC and listed securities.

[8] This additional revenue will be distributed to each floor broker in proportion to the floor broker's share of that month's incremental increase in billable shares.

[9] The Exchange implemented the credit reduction charge in September 2002. *See* Securities Exchange Act Release No. 46592 (October 2, 2002), 67 FR 62999 (October 9, 2002) (SR–CHX–2002–28).

charges among its members and that they permit the Exchange's floor brokers to participate in an earned credit program that provides increased, but not unlimited, opportunities to share in certain of the Exchange's revenues that arise from their trading activities.

2. Statutory Basis

The CHX believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CHX neither solicited nor received written comments concerning the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days after the submission of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–22 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22856 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48413; File No. SR–NASD–2003–127]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for the Listing of Additional Shares Program and To Institute a Record-Keeping Fee for Certain Changes by Issuers

August 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to modify the fees for the listing of additional shares program and to institute a record-keeping fee for certain changes by issuers.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * * *

4500. Issuer Listing Fees

4510. The Nasdaq National Market

(a) No change.

(b) Additional Shares

(1) No change.

(2) The fee in connection with additional shares shall be *$2,500* [2,000] or $.01 per additional share, whichever is higher, up to [a maximum of $22,500 per quarter and] an annual maximum of $45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

(3)–(4) No change.

(c)–(d) No change.

(e) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

4520. The Nasdaq SmallCap Market

(a) No change.

(b) Additional Shares

(1) No change.

(2) The fee in connection with additional shares shall be *$2,500* [2,000] or $.01 per additional share, whichever is higher, up to [a maximum of $22,500 per quarter and] an annual maximum of $45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

(3)–(4) No change.

(c)–(d) No change.

(e) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the fees for the listing of additional shares ("LAS") program and to institute a record-keeping fee for certain changes by issuers.

The LAS program involves notification and fee requirements for the issuance of additional shares. Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the SEC. Revenues from the LAS program are used to fund issuer-related operations that include educational initiatives, issuer service initiatives and NASD surveillance measures.[3]

NASD Rules 4510(b) and 4520(b) currently provide that the fee for the listing of additional shares is $2,000 or $0.01 per additional share, whichever is higher, up to a maximum of $22,500 per quarter and an annual maximum of $45,000 per issuer. There is no fee for issuances of up to 49,999 additional shares per quarter.

Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from $2,000 to $2,500 for issuances of between 50,000 and 250,000 additional shares.[4] Second, the current quarterly cap of $22,500 would be eliminated. The annual cap of $45,000, however, would be retained.

Nasdaq also proposes to institute a $2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, Nasdaq states that the LAS program fees, which are used to fund issuer-related operations,[7] will be imposed on all issuers equally based on the number of additional shares issued. In addition, the proposed record keeping-fee will be imposed equally on all listed issuers that make the changes described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–127 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22855 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

[4] As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

[7] *See* Securities Exchange Act Release No. 31586, *supra* note 3.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48425; File No. SR–Phlx–2003–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Program To Deploy the Options Floor Broker Management System

August 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on August 29, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its pilot program pertaining to the Options Floor Broker Management System (the "System") until September 12, 2003.[6] The System is a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution (AUTO–X) System.[7]

The text of the proposal rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

Philadelphia Stock Exchange
Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(j)
No change.
Commentary:
.01–.05 No change.
.06 Options Floor Broker Management System. The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than [August 29] *September 12,* 2003.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of the rules governing the System beyond the current effective date of August 29, 2003, in order to continue to have rules in place concerning the System and to ensure that Floor Brokers using the System during the continuing deployment will not be in violation of current Exchange rules regarding ticket marking requirements.

The System is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. Floor Brokers or their employees access the System through an electronic Exchange-provided handheld device on which they have the ability to enter the required information as set forth in Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will eventually replace the Exchange's current Floor Broker Order Entry System ("FBOE"),[8] as part of a roll-out of the new System floor-wide.

All of the rules pertaining to the System adopted in July and effective through August 29[9] are proposed to be extended until September 12, 2003, including: Phlx Rules 1014(g), 1015, 1051, 1063, 1064, and 1080.06, as well as Option Floor Procedure Advices ("Advice") A–11, B–6, B–8, C–2, C–3, F–1, F–2, and F–4. In addition to extending the effective date of the rules, this proposal also amends Phlx Rule 1080, Commentary .06 to state that the Exchange will complete deployment of the System by September 12, 2003.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by providing a System that enables Floor Brokers to handle orders they represent more efficiently, while enabling the Exchange to comply with the requirement in the Order to provide an electronic audit trail for non-electronic orders entered on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[6] On July 31, 2003, the Exchange a filed a proposed rule change to implement a pilot program to deploy the Exchange's new System. This proposed rule change was noticed, and accelerated approval was granted thereto, on July 31, 2003. *See* Securities Exchange Act Release No. 48266 (July 31, 2003), 68 FR 152 (August 7, 2003) (SR–Phlx–2003–56). The pilot is currently scheduled to expire on August 29, 2003. The Exchange has also filed for permanent approval of the proposed rules. *See* Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137 (August 7, 2003)(SR–Phlx–2003–40). The Exchange acknowledges that SR–Phlx–2003–40 and Amendment No. 1 thereto are subject to public comment, which may result in amendments to the proposed rules.

[7] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[8] *See* Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Exchange Rule 1080(b). The new System would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Rule 1063(e). Telephone call between Edith Hallahan, First Vice President and Deputy General Counsel, Phlx and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on August 29, 2003.

[9] *See* note 6, *supra.*

[10] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow the System and rules to continue on a pilot basis without interruption until September 12, 2003.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–60 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22857 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4471]

Consular Affairs, Overseas Citizen Services, Office of Children's Issues; 60–Day Notice of Proposed Information Collection: Form DS–3077, The Children's Passport Issuance Alert Program; OMB Control Number 1405–XXXX

AGENCY: 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 to be submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizen Services, Office of Children's Issues, CA/OCS/CI.

Title of Information Collection: The Children's Passport Issuance Alert Progam.

Frequency: On occasion.

Form Number: DS–3077.

Respondents: Concerned U.S. parents, or their agents, who believe their child may be abducted.

Estimated Number of Respondents: 2400/year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1200 hours/year.

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 Sandra McNeilly, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818, who may be reached on (202) 312–9710.

Dated: August 8, 2003.

Dianne M. Andruch,

Deputy Assistant Secretary, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 03–22911 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4472]

30-Day Notice of Proposed Information Collection: Form DS–4024, American Citizens Services Internet Based Registration Service (IBRS); OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. This new Internet Based Information Collection system permits U.S. citizens who travel or reside abroad to register their destination and emergency contacts with the Department of State. This facilitates the provision of emergency assistance to U.S. citizens during crisis or disaster. Comments should be submitted within 30 days of the publication of this notice.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizens Services CA/OCS.

Title of Information Collection: American Citizens Services Internet Based Registration Service (IBRS).

Frequency: On ocassion.
Form Number: DS–4024.
Respondents: American citizens traveling and residing overseas.
Estimated Number of Respondents: An estimated 3.2 million.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 533,333 hours.

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 FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Mike Meszaros, Bureau of Consular Affairs, Overseas Citizens Services, Office of Policy Review and Interagency Liaison, 1800 G Street NW., Washington, DC 20006 who may be reached on (202) 312–9750.

Dated: August 12, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–22912 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4474]

Culturally Significant Objects Imported for Exhibition Determinations: "Goryeo Dynasty: Korea's Age of Enlightenment"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "*Goryeo Dynasty: Korea's Age of Enlightenment,*" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Asian Art Museum, San Francisco, California, from on or about October 18, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 3, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22914 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Nonproliferation; Determination on Export-Import Bank Support for U.S. Exports to Iraq

[Public Notice 4473]

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the President has determined and certified to Congress that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Iraq.

EFFECTIVE DATE: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Caroline R. Russell, Office of Regional Affairs, Bureau of Nonproliferation, Department of State (202–647–9786).

SUPPLEMENTARY INFORMATION: In accordance with section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the Department of State determined that, based on Iraqi activities first discovered in 1991, Iraq has materially violated a safeguards agreement with the International Atomic Energy Agency (IAEA). The violations occurred under the government of Saddam Hussein, which is no longer in power. As a result of this determination, under section 2(b)(4) of the Export-Import Bank Act of 1945, the Board of Directors of the Export-Import Bank is prohibited from giving "approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports" to Iraq.

The President has determined and certified to Congress pursuant to section 2(b)(4) that "it is in the national interest" to waive the restrictions in the law and allow the Export-Import Bank to support United States exports to Iraq. This Presidential determination will enable the Export-Import Bank to approve support for United States exports to Iraq beginning October 17, 2003 (45 days after the date of the President's determination and certification).

Dated: September 3, 2003.

Andrew K. Semmel,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–22913 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–27–P

TENNESSEE VALLEY AUTHORITY

Approval of Construction in the Tennessee River System; Regulation of Structures; Residential Related Use on TVA-controlled Residential Access Shoreland; Effective Date of Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice.

This notice is provided in accordance with Office of Management and Budget (OMB) regulations governing the approval of information collection requirements contained in a recently published final rule (40 CFR 1320.11). On August 7, 2003, TVA published in the **Federal Register** (68 FR 46930) a final rule amending TVA's regulations under section 26a of the TVA Act governing the construction, operation, or maintenance of any dam, appurtenant works, or other obstructions affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. Except for information collection

requirements, which had not yet been approved by OMB, the rule's effective date was established as September 8, 2003. TVA was informed by OMB on August 14, 2003 that the information collection requirements contained in the final rule have been approved. The OMB Control Number is 3316–0060, and the expiration date is August 31, 2006. Accordingly, those requirements are effective together with the other requirements of the final rule on September 8, 2003.

DATES: The information collection requirements contained in the final rule published in the **Federal Register** by TVA on August 7, 2003, are effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523, *whmccauley@tva.gov.* (SC: 000V7DC).

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–22887 Filed 9–8–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.613–1, Material Strength Properties and Material Design Values

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The Federal Aviation Administration announces the issuance of Advisory Circular (AC) 25.613–1, "Material Strength Properties and Material Design Values." The advisory circular provides guidance related to a recently published amendment concerning material strength properties and material design values for transport category airplanes.

DATES: Advisory Circular 25.613–1 was issued by the FAA Transport Airplane Directorate on August 6, 2003.

How to Obtain Copies: An electronic copy of AC 25.613–1 can be downloaded from the Internet at *http://www.airweb.faa.gov/rgl* by taking the following steps: Click on "Advisory Circulars." Under "Search Help" click on "Current ACs by Number." A paper copy will be available in approximately 6–8 weeks from the U.S. Department of Transportation, subsequent distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on August 6, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22923 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held September 24, 2003, from 1–3:30 pm.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (Rm. 2AB), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: 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 a Free Flight Steering Committee meeting.

Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.

The agenda will include:

- September 24:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
  - Free Flight Select Committee Reports
  - Other Business
  - Free Flight Steering Committee Meeting Dates for the balance of Calendar Year 2003
  - Closing Session (Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statemenets at the meeting. Persons wishing to present statement or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 28, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03–22806 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

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 Des Moines 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) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Director of Aviation, Des Moines International Airport, at the following address: City of Des Moines, 5800 Fleur Drive, Des Moines, Iowa 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Des Moines International Airport, Des Moines, Iowa, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, FAA, Central Region, 901

Locust Street, Kansas City, MO 64106, (816) 329–2642. 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 Des Moines 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) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 185).

On August 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 13, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March, 2005.

Proposed charge expiration date: January, 2008.

Total estimated PFC revenue: $8,543,039.

Brief description of proposed project(s): Provide a passenger terminal paging system; expand the passenger terminal concourse stem; install required sprinkler system in passenger terminal building; modify passenger loading bridges; and construct a glycol tank storage area. 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 Des Moines International Airport, Des Moines, Iowa.

Issued in Kansas City, Missouri, on August 25, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–22805 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2003–16095

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Metropolitan and Statewide Transportation Planning.

DATES: Comments must be submitted before November 10, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Noonan, Office of Planning, (202) 366–1648.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB extension of this information collection.

Title: Metropolitan and Statewide Transportation Planning (OMB Number: 2132–0529).

Background: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) jointly carry out the federal mandate to improve urban and rural transportation. 49 U.S.C. 5303 and 23 U.S.C 134 and 135 authorize the use of federal funds to assist Metropolitan Planning Organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve the transportation needs of urbanized areas over 50,000 in population. The information collection activities involved in developing the Unified Planning Work Program (UPWP), the Metropolitan Transportation Plan, the Statewide Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP) are necessary to identify and evaluate the transportation issues and needs in each urbanized area and throughout every state. These products of the transportation planning process are essential elements in the reasonable planning and programming of federally funded transportation investments.

In addition to serving as a management tool for MPOs and state DOTs, the UPWP is used by both FTA and FHWA to monitor the transportation planning activities of those agencies. It is also needed to establish national outyear budgets and regional program plans, develop policy on using funds, monitor state and local compliance with national technical emphasis areas, respond to Congressional inquiries, prepare congressional testimony, and ensure efficiency in the use and expenditure of federal funds by determining that planning proposals are both reasonable and cost-effective. 49 U.S.C. 5303 and 23 U.S.C. 134(h) require the development of TIPs for urbanized, STIPs are mandated by 23 U.S.C. 235(f). After approval by the Governor and MPO, metropolitan TIPs in attainment areas are to be incorporated directly into the STIP. For nonattainment areas, FTA/FHWA must make a conformity finding on the TIPs before including them into the STIP. The complete STIP is then jointly reviewed and approved or disapproved by FTA and FHWA. These conformity findings and approval actions constitute the determination that states are complying with the requirements of 23 U.S.C. 235 and 49 U.S.C. Section 5303 as a condition of eligibility for federal-aid funding. Without these documents, approvals and findings, capital and/or operating assistance cannot be provided.

Respondents: State Departments of Transportation (DOTs) and Metropolitan Planning Organizations.

Estimated Annual Burden on Respondents: 634.7 hours for each of the 453 respondents.

Estimated Total Annual Burden: 287,519 hours.

Frequency: Annual.

Issued: September 4, 2003.

Rita L. Wells,

Associate Administrator for Administration.

[FR Doc. 03–22924 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957]

Pipeline Safety: Renewal of information Collection: Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing RSPA information collection. This information collection concerns a pipeline safety regulation that requires hazardous liquid pipeline operators who operate more than 500 miles of pipeline to follow certain protocols in areas designated as high consequence areas (HCAs). RSPA intends to request OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. The purpose of this notice is to allow the public 60 days from the date of this notice to send in their comments.

Abstract: RSPA pipeline safety regulation 49 CFR 195.452 designates certain environmentally sensitive areas that are particularly vulnerable to the consequences of hazardous liquid pipeline accidents as high consequence areas (HCAs). The rule was promulgated in on December 1, 2000 (65 FR 75378) to provide for thorough assessment and repair of pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. RSPA now requires hazardous liquid pipeline operators with more than 500 miles of pipeline to develop and follow an integrity-management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas.

DATES: Comments on this notice must be received by November 10, 2003, to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments in duplicate to the Research and Special Programs Administration, U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001 or e-mail to dms.dot.gov. Comments can be reviewed at the dockets facility which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Comments must identify docket number of this notice. Persons should submit the original documents and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Please identify the docket number shown in the heading of this notice. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: Certain areas are particularly environmentally sensitive from hazardous liquid pipeline failures. These areas are called high consequence areas (HCA's).

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 54,780.

OMB Control Number: 2137–0604.

Comments are invited on: (a) The need for the proposed collection of information 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 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 technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. All comments will also be available to the public in the docket.

Issued in Washington, DC, on August 29, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–22925 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–838 and AB–33 (Sub–No. 199)]

East St. Louis Junction Railroad Company—Adverse Abandonment and Union Pacific Railroad Company—Adverse Discontinuance—in St. Clair County, IL

On August 20, 2003, the Illinois Department of Transportation (IDOT) filed with the Surface Transportation Board (Board) an application under 49 U.S.C. 10903 seeking the adverse abandonment of the East St. Louis Junction Railroad Company's (ESLJ) line of railroad between milepost 0.0 and milepost 1.16, plus 6.40 miles of switch track and .34 miles of spur track, a total of 7.90 miles of track, in the National Stock Yards in St. Clair County, IL. IDOT also requests that the Board grant an adverse discontinuance of rail service over the subject rail property provided by ESLJ's lessee, Union Pacific Railroad Company (UP). The line traverses United States Postal Service ZIP Code 62071, and includes the station of National Stock Yards.

Appreciable portions of the land underlying the railroad line proposed for abandonment and discontinuance of service are required for the construction of a relocated Illinois Route 3 and the construction of a connection from Interstate Highway I–64 in Illinois to a proposed New Mississippi River Bridge and relocated Interstate Highway I–70. This abandonment will permit the grade separation of all state highways and railroad lines in this area.

Based on information in IDOT's possession, the line does not contain Federally granted rights-of-way. Any documentation in IDOT's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment and discontinuance was filed with the application.[1]

This line of railroad has not appeared on the railroads' system diagram map in Category 1.

The interests of UP's employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). Employees of ESLJ, however, will not receive such protection, as all

[1] In a decision served in this proceeding on June 30, 2003, IDOT was granted exemptions and waivers, respectively, from several of the applicable statutory provisions governing rail line abandonments, and from several related filing requirements of the Board's regulations at 49 CFR 1152.

of the railroad's line is to be abandoned and it is not part of a system that will benefit from the abandonment. *See Yreka Western Railroad Company—Abandonment Exemption—In Siskiyou County, CA*, STB Docket No. AB–246 (Sub-No. 2X) (STB served May 4, 1999).

In an application by a third party for a determination that the public convenience and necessity permits service over a line to be discontinued and the line itself to be abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party (or "adverse") application, the Board withdraws its primary jurisdiction over the line. Questions concerning the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities. *See Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban.*, 7 I.C.C.2d 216, 224–26 (1990).

Because IDOT intends to convert the property underlying the subject rail line to highway purposes, conflicting public use requests are not appropriate, and offers of financial assistance to acquire or subsidize service on the line will not be entertained in this proceeding.

Any interested person may file with the Board its protest of, or written comments concerning, the proposed abandonment and discontinuance of service.[2] Written comments and protests must identify the proceeding, *i.e.*, STB Docket No. AB-No. 838, in the case of the abandonment of the ESLJ line, and STB Docket No. AB–33 (Sub-No. 199), in the case of the discontinuance of service by UP, and must be filed by no later than October 6, 2003.

Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business; (2) a statement describing protestant's interest in the proceeding including: (i) A description of the protestant's use of the line; (ii) if protestant does not use the line, information concerning the group or public interest it represents; and (iii) if protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available); (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)); and (4) any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding: (i) Environmental impact; (ii) impact on rural and community development; or (iii) recommended provisions for protection of the interests of employees.

All filings in response to this notice must refer to STB Docket No. AB–838 and STB Docket No. AB–33 (Sub-No. 199), and should be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Fritz R. Kahn, Esq., 1920 N Street, NW., (8th floor), Washington, DC 20036–1601. The original and 10 copies of all comments or protests shall be filed with the Board, together with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking information concerning the filing of protests may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 2, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22773 Filed 9–8–03; 8:45 am]

BILLING CODE 4915–00–P

[2] Persons opposing the proposed abandonment or discontinuance who wish to participate actively and fully in the process through the submission of their entire opposition case in the form of verified statements and arguments, should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 238X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart *F—Exempt Abandonments* to abandon 4.0 miles of its line of railroad between milepost BH–0.0 at Bull Creek and milepost BH–4.0 at Harman. in Buchanan County, VA. The line traverses United States Postal Service Zip Code 24618.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 9, 2003,[1] unless

[1] In its notice, NSR indicated a proposed consummation date of October 8, 2003. Under 49 CFR 1152.50(d)(2), however, the earliest the exemption could become effective is 50 days after the verified notice of exemption was filed. The notice was filed on August 20, 2003. Therefore, the

Continued

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 19, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 29, 2003, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by September 12, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by September 9, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22772 Filed 9–8–03; 8:45 am]

BILLING CODE 4915–00–P

effective date of the exemption is October 9, 2003, and consummation may not take place prior to that date. NSR's representative has been notified and has confirmed that consummation will not take place before October 9, 2003.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, William Fox, Acting Deputy General Counsel.

2 John M. Dalrymple, Deputy Commissioner (Operations Support).

3. Eric Solomon, Deputy Assistant Secretary (Regulatory Affairs).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 4, 2003.

Emily A. Parker,

Acting Chief Counsel, Internal Revenue Service.

[FR Doc. 03–22947 Filed 9–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, October 8–9, 2003, from 9 a.m. to 5 p.m. each day. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 430, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of those analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

Those who wish to attend should contact Ms. Ersie Farber-Collins, of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–7268, or by fax at (202) 275–1728, prior to October 7, 2003. Members of the public may submit written questions or prepared statements for review by the Committee in advance of the meeting. Statements must be received at least five (5) days prior to the meeting and should be sent to Ms. Farber-Collins' attention at the address given above. Those who submit material may be asked to clarify it prior to its consideration by the Committee.

Dated: September 3, 2003.

By Direction of the Secretary:

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–22953 Filed 9–8–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–38

[FPMR Amendment H–211 and FMR Amendment B–3]

RIN 3090–AH10

Federal Management Regulation; Sale of Personal Property

Correction

In rule document 03–21485 beginning on page 51420 in the issue of Tuesday, August 26, 2003, make the following corrections:

1. On page 51420, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last line, "PMR H–211" should read, "FPMR H–211".

PART 102–38—[CORRECTED]

2. On page 51422, in the second column, in the table of contents, the heading "**Subpart D—Completion of Sale Awards**" should read, "**Subpart D—Completion of Sale**".

3. On the same page, in the same column, add the following undesignated center heading directly under the subpart heading:

"**Awards**".

§ 102–38.175 [Corrected]

4. On page 51425, in the second column, in § 102–38.175, in the section heading, in the third line, "**debarred From**" should read, "**debarred from**".

5. On the same page, in the same column, in the same section, in the second line, "From Federal Procurement" should read, "from Federal Procurement".

§ 102–38.325 [Corrected]

6. On page 51427, in the second column, in § 102–38.325, the section should be combined into one paragraph.

[FR Doc. C3–21485 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regulations

Correction

In rule document 03–21610 beginning on page 51153 in the issue of Tuesday, August 26, 2003, make the following correction:

§416.994 [Corrected]

On page 51167, in the first column, in §416.994(b)(5)(vi) in the first line, "your impairment(s)" should read "If your impairment(s)."

[FR Doc. C3–21610 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9063]

RIN 1545–BB99

Distributions of Interests in a Loss Corporation From Qualified Trusts

Correction

In rule document 03–16229 beginning on page 38177 in the issue of Friday, June 27, 2003 make the following corrections:

1. On page 38178, in the second column, under the heading "**Amendments to the Regulations**", remove the third and fourth lines.

§1.382–1 [Corrected]

2. On the same page, in the same column, in §1.382–1, the regulatory material following **Par. 2** should read as follows:

§ 1.382–1 Table of contents.

* * * * *

§ 1.382–10T Special rules for determining time and manner of acquisition of an interest in a loss corporation (temporary).

* * * * *

§ 1.382–10T [Corrected]

3. On the same page, in the third columnthe section heading number should read "§ 1.382–10T".

[FR Doc. C3–16229 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 9, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 482, and 489
Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 482, and 489

[CMS–1063–F]

RIN 0938–AM34

Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule clarifies policies relating to the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions who present to a hospital under the provisions of the Emergency Medical Treatment and Labor Act (EMTALA).

The final rule responds to public comments received on a May 9, 2002 proposed rule (67 FR 31404) that both reiterated the agency's interpretations under EMTALA and proposed clarifying changes relating to the implementation of the EMTALA provisions. These reiterations and clarifying changes related to, among other areas, seeking prior authorization from insurers for services, emergency patients presenting at off-campus outpatient clinics that do not routinely provide emergency services, the applicability of the EMTALA provisions to hospital inpatients and outpatients, the circumstances under which physicians must serve on hospital medical staff "on-call" lists, and the responsibilities of hospital-owned ambulances.

These reiterations and clarifying changes are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by individuals, physicians, or hospital employees.

DATES: The provisions of this final rule are effective on November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gustafson, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.**

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Table of Contents

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals and critical access hospitals (CAHs) that offer emergency services. (Throughout this final rule, when we reference the obligation of a "hospital" under these sections of the Act and in our regulations, we mean to include CAHs as well.) These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals and physicians responsible for the following: (a) Negligently failing to appropriately screen an individual seeking medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring an individual in an inappropriate manner. (Section 1867(e)(4) of the Act defines "transfer" to include both transfers to other health care facilities and cases in which the individual is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Social Security Act because of its concern with an "increasing number of reports" that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did not have insurance:

"* * * the Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other situations, patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital.

"There is some belief that this situation has worsened since the prospective payment system for hospitals became effective. The Committee wants to provide a strong assurance that pressures for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards.

"[Under the statute] [a]ll participating hospitals with emergency departments would be required to provide an appropriate medical screening examination for any individual who requests it (or has a request made on his [or her] behalf) to determine whether an emergency medical condition exists or if the patient is in active labor." (H.R. Rept. No. 99–241, Part I, 99th Cong., 1st Sess. (1985), p.27.)

In addition, section 1867(d)(2) of the Act provides for a private right of enforcement for any individual who is harmed as a "direct result" of a violation of the Act. In enacting this section of the law, Congress did not intend for the statute to be used as a Federal malpractice statute. Indeed, many courts are in agreement that EMTALA is not a Federal malpractice statute (for example, *Bryan* v. *Rectors and Visitors of University of Virginia*, 95 F.3d 349, 351 (4th Cir. 1996); *Lopez-Soto* v. *Hawayek*, 175 F.3d 170, 177 (1st Cir. 1999); and *Baker* v. *Adventist Health, Inc.*, 260 F.3d 987, 994 (3rd Cir. 2001).

The regulations implementing section 1867 of the Act are found in 42 CFR 489.24, Special responsibilities of Medicare hospitals in emergency cases. Existing § 489.24 provides for the following:

- Requires that when an individual presents to a hospital's emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination to determine whether or not an emergency medical condition exists. (Paragraph (a))
- Defines certain terms, including "comes to the emergency department," "emergency medical condition," "stabilized," and "to stabilize." (Paragraph (b))
- Addresses procedures a hospital must follow when it determines, with respect to a patient, that an emergency medical condition exists. If the hospital determines that an emergency medical condition exists, the hospital must provide for further medical examination and treatment as required to stabilize the individual. If the hospital does not have the capabilities to stabilize the individual, an appropriate transfer to another facility is permitted. (Paragraph (c)) A transfer is appropriate when the medical benefits of the transfer outweigh the medical risks of the transfer and other requirements, specified in the regulations, are met. (Paragraph (d)) In addition, the hospital may transfer an unstable patient who makes an informed written request. A hospital may not delay an appropriate medical screening examination, or further examination or treatment, to inquire about the patient's payment method or insurance status. (Paragraph (c))

In addition, § 489.24 addresses: (a) Restriction of a transfer until the individual is stabilized; (b) the responsibilities of the receiving hospital; (c) termination of the provider agreement for failure to comply with EMTALA requirements; and (d) matters concerning consultation with Quality Improvement Organizations (QIOs). (Paragraphs (d) through (h), respectively)

Some EMTALA-related requirements are implemented under regulations at §§ 489.20(l), (m), (q), and (r)(1), (r)(2), and (r)(3). Those regulations deal with

a hospital's obligations to report the receipt of patients whom it has reason to believe may have been transferred inappropriately; to post signs in the emergency department describing an individual's rights to emergency treatment under section 1867 of the Act; and to maintain patient records, physician on-call lists, and emergency room logs. We are including this brief description for informational purposes but, because we are not changing the regulations in § 489.20, they will not be discussed further in this document.

In promulgating these cited regulatory sections and in enforcing the provisions of EMTALA, we are aware of the necessary balance between the hospital's and a physician's legal duty to provide examination and treatment (both under the statute and under the common law) and the practical realities of the manner in which hospitals and medical staffs are organized and operated on a day-to-day basis, as well as proper mobilization of resources within hospitals in order to comply with these legal duties. Reports of overcrowding are common in many parts of the country. Within the requirements of EMTALA, individuals should be treated at the appropriate site of care.

Hospitals and physicians have now had over 15 years of experience in organizing themselves to comply with the provisions of EMTALA. Therefore, in a proposed rule published in the **Federal Register** on May 9, 2002 as part of the annual proposed rules for the acute care hospital inpatient prospective payment system (67 FR 31469), we solicited comments from hospitals, physicians, patients, and beneficiary groups on certain proposed changes to the EMTALA policies as discussed in sections III. through XIV. of this preamble.

II. Special Advisory Bulletin on EMTALA Obligations

On November 10, 1999, CMS (then HCFA) and the Office of the Inspector General (OIG) published jointly in the **Federal Register** a Special Advisory Bulletin addressing the requirements of the EMTALA statute and the obligations of hospitals to medically screen all individuals seeking emergency services and to provide stabilizing medical treatment as necessary to all individuals, including enrollees of managed care plans, whose conditions warrant it (64 FR 61353). The Special Advisory Bulletin addressed issues of dual staffing of hospital emergency rooms by managed care and nonmanaged care physicians, prior authorization requirements of some managed care plans, use of advance beneficiary notices (ABNs) or other financial responsibility forms, handling of individuals' inquiries about financial liability for emergency services, and voluntary withdrawal of a treatment request. Although it did not amend the Code of Federal Regulations, the Special Advisory Bulletin informs individuals of HHS policy regarding application of the EMTALA statute and offers advice on the best practices to follow to avoid violation of the requirements imposed under that statute.

As discussed further in section V. of this preamble, in the May 9, 2002 proposed rule, we proposed to codify certain policies on prior authorization that are currently stated only in the Special Advisory Bulletin. We believe these changes in the regulations are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by patients, physicians, or hospital employees.

III. Summary of the Provisions of the May 9, 2002 Proposed Rule Relating to EMTALA and Hospital Responsibility for Communication With Medicare+Choice Organizations Concerning Post-Stabilization Care Services

A. Summary of the Proposed Provisions Relating to EMTALA

Recently, a number of questions have been raised about the applicability of § 489.24 to specific situations. These questions arise in the context of managed care plans' requirements for prior authorization, case experiences involving elective procedures, and situations where individuals have been admitted as inpatients without being stabilized, or patients who had been stabilized later experience a deterioration in their medical condition. Some hospitals are uncertain about whether various conditions of participation (CoPs) found in 42 CFR part 482 apply to these situations or whether the EMTALA requirements included in the provider agreement regulations at § 489.24 apply, or both. Some representatives of the provider community have asked us to reexamine CMS policy on the applicability of EMTALA to physicians who are "on call" and to hospitals that own ambulances when those ambulances operate under communitywide emergency medical services (EMS) protocols.

To help promote consistent application of the regulations concerning the special responsibilities of Medicare-participating hospitals in emergency cases, in the May 9, 2002 proposed rule (67 FR 31469), we proposed changes to § 489.24 to clarify its application in these situations and at the same time address concerns about EMTALA raised by the Secretary's Advisory Committee on Regulatory Reform. These changes are discussed more fully below and include the following:

- We proposed to change the requirements relating to individuals who present with what may be emergency medical conditions at off-campus outpatient clinics and facilities that do not routinely provide emergency medical services. We believe these changes will enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics, rather than being transported to the main campus emergency department, which may be located at a greater distance from the clinic.
- We proposed to clarify the extent to which EMTALA applies to inpatients and outpatients. We believe these clarifications will enhance understanding for hospitals as to what their obligations are under EMTALA, so that they more clearly understand to whom they are obligated under this provision of the statute, and whose care will be governed by the Medicare hospital CoPs.
- We proposed to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications will help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. We proposed clarification of the on-call list requirements to permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We proposed to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these

resources more efficiently for the benefit of these communities.

In the May 9, 2002 proposed rule, we specifically solicited comments on all of these proposed changes. In response to the proposed rule, we received approximately 600 pieces of correspondence, most of which contained multiple comments. A large number of these comments were received on the last day of the comment period for the proposed rule (July 8, 2002). Because of the number and nature of the public comments we received on our proposed clarifications and our limited timeframe for developing the final acute care hospital inpatient prospective payment system regulations for publication by the statutory deadline of August 1, we decided, with one exception (application of the EMTALA provisions to provider-based entities), to address the public comments and finalize the proposed clarifications relating to implementation of EMTALA in a separate document. This final rule is that separate document.

In the next several sections of the preamble of this final rule, we summarize the public comments received on the proposed EMTALA clarifications and present our responses to those comments, including any further revisions that we are making in this final rule to the proposed regulation changes as a result of these comments.

B. Summmary of the Proposed Provisions Relating to Communication with Medicare+Choice Organizations Concerning Post-Stabilization Care Services

In the May 9, 2002 proposed rule (67 FR 31471), we proposed to specify that a hospital must promptly contact the Medicare+Choice organization after a Medicare+Choice enrollee who is treated for an emergency medical condition is stabilized (proposed § 489.24(d)(6)). We received a number of public comments on this proposed provision. However, we are not addressing public comments received on this provision in this final rule but plan to address them in future policy guidance.

IV. General Comments on the Proposed Rule

Comment: Some commenters expressed overall support for our proposed clarifying changes to establish more flexible standards on EMTALA, but did not offer specific recommendations for modifying them. However, one commenter, the administrator of a small rural hospital in the Midwest, expressed concern that our proposals appear to represent a shift from national requirements to community-based standards, under which the level of emergency care available in a community would be determined by the medical staffs of individual hospitals. This commenter stated that, in many cases, it is possible to continue to maintain emergency department services in the local community only because of the pressure exerted on physicians by EMTALA to continue to see patients in the emergency department. Therefore, the commenter recommended that any changes in EMTALA regulatory requirements be directed to making those requirements more stringent and specific and stated that relaxing EMTALA requirements as proposed will only undermine the efforts of small rural hospitals to maintain viable emergency services for their patients.

Response: We appreciate the commenters' support, and have kept their views in mind in considering the comments of those respondents who recommended revisions. In regard to the commenter's recommendations that we make the EMTALA requirements more stringent (rather than relaxing them) for the benefit of small rural hospitals, we note that we received many comments expressing concern that the current requirements may be too burdensome, and therefore, the commenters recommended more flexible EMTALA rules. We considered all of the comments received when finalizing our policy.

V. Prior Authorization (§ 489.24(d)(4))

A. Provisions of the Proposed Rule

Some managed care plans may seek to pay hospitals for services only if the hospitals obtain approval from the plan for the services before providing the services. Requirements for this approval are frequently referred to as "prior authorization" requirements. However, EMTALA (specifically, section 1867(h) of the Act and our existing regulations at § 489.24(c)(3)) explicitly prohibit hospitals from delaying screening or stabilization services in order to inquire about the individual's method of payment or insurance status. Thus, prior authorization requirements are a matter of concern because a hospital's actions in seeking prior authorization from an insurer could result in a delay in the provision of services required by EMTALA. Our existing policy prohibits a participating hospital from seeking authorization from the individual's insurance company for screening services or services required to stabilize an emergency medical condition until after the hospital has provided the appropriate medical screening examination required by EMTALA to the individual and has initiated any further medical examination and treatment that may be required to stabilize the patient's emergency medical condition.

In the May 9, 2002 proposed rule, we solicited public comments as to whether the regulations should be revised to state that the hospital may seek other information (apart from information about payment) from the insurer about the individual, and may seek authorization for all services concurrently with providing any stabilizing treatment, as long as doing so does not delay required screening and stabilization services (67 FR 31471).

In addition, we proposed to clarify that an emergency physician is not precluded from contacting the patient's physician at any time to seek advice or information regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient, as long as this consultation does not inappropriately delay required screening services or stabilizing treatment.

As explained earlier, this policy was stated in a Special Advisory Bulletin published jointly by CMS (then HCFA) and the OIG. We proposed to clarify the existing language at § 489.24(c)(3) (which was proposed to be redesignated as paragraph (d)(4)) in the proposed rule to include this policy in the regulations.

B. Summary of Public Comments and Departmental Responses

1. General Comments

Comment: Several commenters expressed general approval of our proposals without recommending more specific changes.

Response: We appreciate the commenters' support of the proposals and have taken their views into account in considering the comments of those respondents who recommended revisions.

2. Concurrent Authorization and Furnishing of Stabilizing Services

Comment: Two commenters recommended that we delete any reference to seeking authorization for post-stabilization services concurrently with the provision of stabilizing treatment. The commenters believed clinical staff cannot easily distinguish between screening services and stabilizing treatment, and thus may be uncertain as to when stabilizing treatment has begun in order to seek authorization for the services. Another

commenter believed that allowing such concurrent authorization serves no useful purpose and leaves the hospital open to charges that the steps taken to obtain concurrent authorization actually delay stabilization services. This commenter also recommended that the regulations not allow the concurrent authorization of stabilizing treatment and the furnishing of actual stabilizing treatment.

Response: We recognize that the distinction between screening services and stabilizing treatment may be difficult to define outside the context of a specific case. However, we believe clinicians will be able, when dealing with a particular patient or case, to identify clearly when the assessment of an individual has concluded and they have begun stabilizing the patient with an emergency medical condition. We expect that these clinical judgments will be the basis for determining when contact will be appropriate, and that surveyors will use their own clinical training and experience in evaluating clinicians' actions.

Regarding the comment that authorization serves no useful purpose, we note that the regulation merely permits, but does not require, hospitals to seek concurrent authorization with the furnishing of stabilizing treatment. We do not believe it is appropriate to prohibit the practice in all cases and, therefore, are not making any revision to the proposed language, which we are adopting in this final rule, based on this comment.

We would like to clarify again that hospitals that choose to seek concurrent authorization while administering stabilizing treatment must not delay such treatment in order to obtain authorization. Even if the approving insurer or physician denies authorization for the stabilizing treatment, the hospital is *obligated* under EMTALA to provide the necessary stabilizing treatment (if the hospital has such capabilities).

Comment: Some commenters stated that restrictions on contact with a patient's insurer are not appropriate because a hospital's administrative staff might not be fully aware of the status of an individual's treatment (that is, whether a screening has occurred and stabilizing treatment has been initiated) and that a hospital might, therefore, violate this requirement inadvertently by requesting authorization prematurely, even though no delay in the screening or stabilization actually occurs.

Response: We recognize the possibility pointed out by the commenter, but believe that hospitals will be able to develop procedures to alert administrative staff as to when contact may be initiated.

3. Authorization Requests by Nonphysician Practitioners

Comment: Five commenters recommended that we state more specifically that CMS' policies on prior authorization apply to authorization for both hospital and physician (and nonphysician practitioner) services. In addition, the commenters recommended that the regulations be revised to clarify whether EMTALA policies also apply to emergency medical or stabilizing services furnished by nonphysician practitioners.

A number of commenters recommended that the regulations be revised to state that nurse practitioners and all other medical or hospital personnel involved in the individual's treatment, and not just emergency physicians, are permitted to contact the patient's physician for information and advice relevant to the patient's medical history and needs, as long as screening services or stabilizing treatment are not inappropriately delayed.

Another commenter recommended a change in the wording of proposed § 489.24(d)(4)(iii) regarding contacts between emergency physicians and individuals' personal physicians. The commenter believed that the regulations should also allow such contacts with the individual's physician to be initiated by a qualified medical person other than a physician, such as a physician assistant or nurse practitioner.

Response: We agree with the commenters that the prior authorization policies apply equally to hospital services, physician services, and nonphysician practitioner services, and are revising § 489.24(d)(4)(ii) to clarify this point. We also agree that qualified medical personnel other than physicians, such as nonphysician practitioners (physician assistants and nurse practitioners), should be permitted to initiate such contacts, and are revising § 489.24(d)(4)(iii) in this final rule accordingly.

Comment: A number of commenters recommended that the final rule be revised to state that concurrent contact with an individual's insurer (that is, contact undertaken by administrative staff not involved in patient screening or treatment that occurs while clinical staff continue to screen the individual) is not a violation of EMTALA as long as it does not delay screening or stabilization.

Response: We recognize that section 1867(h) of the Act states only that a hospital may not delay an EMTALA screening or stabilization in order to inquire about the individual's method of payment or insurance status, and does not specifically address the issue of when it is appropriate for contact with the individual's insurer to be made. Hospitals have in the past expressed a need for further guidance on the agency's policy in this area and the Special Advisory Bulletin cited earlier was developed to provide guidance on this and other issues. We do not wish to be overly prescriptive on this issue, but do believe that hospitals should have a clear statement of the agency's policy and that the policy should strike a reasonable balance between the need to avoid creating circumstances in which screening or stabilization will be likely to be delayed and the equally important need to protect the individual from avoidable liability for the costs of emergency health care services. We believe the policy in the Special Advisory Bulletin and reiterated in proposed rule strikes that balance. Therefore, we are not adopting the commenters' suggestion.

Further, we note that many insurers now provide a "window" of at least 24 hours following emergency department treatment during which authorization can be obtained. In addition, many States have enacted revisions to their insurance statutes over the past several years that explicitly contemplate the existence of the Federal EMTALA statute. As a practical matter, we believe this feature of private insurance contracts, as well as State laws governing health insurance contracts, will allow screening and stabilization to go forward without compromising the individual's rights to have care covered under his or her health plan.

4. Medical Staff Communications

Comment: Two commenters objected to the proposed language under which contact by an emergency physician with the individual's physician is not prohibited as long as the consultation does not inappropriately delay EMTALA-mandated screening or stabilization. One commenter stated that it is never appropriate for regulations to restrict physicians' communications with one another. The other commenter stated that section 1867(h) of the Act governs only contacts for the purpose of insurance information and does not relate in any way to contact with the individual's physician. The commenter believed the proposed language at § 489.24(d)(4)(iii) should be deleted because, in the commenter's view, it implies that some contacts with individuals' physicians might be

prohibited by EMTALA, and that making such contacts therefore could expose the hospital or the emergency physician to sanctions.

Response: We agree that physician communication regarding patient medical status and information is essential. We expect the regulations will dispel any possible concerns about the appropriateness of this communication. Therefore, we do not believe it is necessary to make any change in the regulations in this final rule based on this comment.

Comment: Two commenters stated that the proposed language regarding contact with the patient's physician not being prohibited as long as the consultation does not inappropriately delay EMTALA-mandated screening or stabilization is unclear, and recommended that it be revised to state that such contact is not inappropriate as long as it does not otherwise delay the start of the medical screening examination.

Response: We do not believe the language as proposed is less clear than the commenters' recommended alternative. The commenters' alternative could suggest instead that delays in stabilizing treatment would be acceptable. Therefore, we are not adopting the recommendation of the commenters.

Comment: One commenter suggested that CMS clarify the proposed regulatory language by citing lists of appropriate referral physicians or participating providers as examples of the types of information that may appropriately be obtained as long as prior authorization is not sought.

Response: We agree that it would not be inappropriate to discuss the types of information the commenter cited with the patient's attending physician. However, we do not believe these types of information are representative samples of the types of information that such contacts should elicit. Therefore, we are not making any change in the final rule based on this comment.

5. Out-of Network Coverage

Comment: Some commenters stated that they understood the need to avoid delaying EMTALA screening or stabilization to obtain prior authorization, but suggested that, if such authorization is not obtained, patients might be left with substantial financial responsibility. The commenters noted that individuals may request information about the costs of services while awaiting a screening examination. They stated that, while it is important to avoid even the appearance of coercion of an individual to leave the emergency department, it is also important to recognize the patient's right to be informed of potential financial liability for services (including increased liability for out-of-network services) before, rather than after, the services are furnished. These commenters recommended that the regulations be revised to state that a hospital may request financial or coverage information as long as doing so does not delay screening or stabilization. The commenters also recommended that we state that there may be discussion of the limits of an individual's health insurance coverage if the individual asks about the charges for the emergency department visit.

Response: As noted in the Special Advisory Bulletin cited earlier (64 FR 61355), current Interpretive Guidelines indicate that hospitals may continue to follow reasonable registration processes for individuals presenting with an emergency medical condition. Reasonable registration processes may include asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes should not unduly discourage individuals from remaining for further evaluation. As requested by the commenter, in this final rule, we are revising proposed § 489.24(d)(4) by adding a new paragraph (iv) to clarify this policy. To avoid any misunderstanding of the requirement, we have revised the language of the interpretative guidelines to state that reasonable registration processes must not unduly discourage individuals from remaining for further evaluation.

Regarding a hospital's response to an individual's inquiry about financial liability for emergency services, the Special Advisory Bulletin states that any such inquiry should be answered by a staff member who is well-trained and knowledgeable and that the staff member should explain to the individual that, regardless of the individual's ability to pay, the hospital stands ready and willing to provide any necessary screening or stabilization services or both. Staff should encourage the individual to defer further discussion of financial responsibility issues, if possible, until after any necessary screening has been performed. We do not believe that this explanation needs to be included in the regulations.

Comment: One commenter suggested that, in the interest of avoiding any appearance that an individual's screening or stabilization may have been influenced by the individual's perceived ability or inability to pay, financial information collected by registration or billing staff should not be included in the patient chart that goes back to the clinical staff who are caring for the individual.

Response: We agree that such a procedure could help avoid the perception of improper financially based influences on screening or treatment decisions. We do not believe it is necessary to revise the final rule to require that such information be excluded from the patient's chart.

C. Provisions of the Final Rule on Prior Authorizations

In summary, we are adopting the proposed changes relating to prior authorization for necessary stabilizing treatment for emergency medical conditions under § 489.24(d)(4) as final, with the following modification:

We are revising paragraph (d)(4)(ii) to indicate that prior authorization policies apply to services furnished by a hospital, a physician, or a nonphysician practitioner.

We are revising paragraph (d)(4)(iii) to specify that an emergency physician as well as any nonphysician practitioner involved in the emergency treatment is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history as long as the consultation does not delay screening and stabilizing services.

We are adding a new paragraph (d)(4)(iv) to specify that hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required under EMTALA, as long as the procedures do not result in a delay in screening or treatment.

VI. Clarification of "Comes to the Emergency Department" (§ 489.24(a) and (b))

A. Background

Section 1867(a) of the Act and our existing regulations at § 489.24(a) provide, in part, that if any individual comes to the emergency department of a hospital and a request is made on that individual's behalf for examination or treatment of a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department. Section 1867(b) of the Act and our existing regulations at § 489.24(c) provide, in part, that if the hospital determines that such an individual has an emergency medical condition, the hospital is further obligated to provide either necessary

stabilizing treatment or an appropriate transfer. Occasionally, questions have arisen as to whether these EMTALA requirements apply to situations in which an individual comes to a hospital, but does not present to the hospital's emergency department.

B. Provisions of the Proposed Rule

In the May 9, 2002 proposed rule (67 FR 31472), we proposed to consolidate the EMTALA requirements for screening (currently in § 489.24(a)) and for stabilization or appropriate transfer (currently in § 489.24(c)) into a single revised paragraph (a). This consolidation was not intended to change the substance of the requirements, but only to set forth more concisely, in a single opening paragraph, the essential requirements of EMTALA. In proposed paragraph (b), we proposed to clarify the criteria for determining under what conditions a hospital is obligated by EMTALA to screen and, if necessary, stabilize or transfer an individual who comes to a hospital, presenting either at its dedicated emergency department, as we proposed to define, or elsewhere on hospital property, and requests examination or treatment, or has such a request made on his or her behalf.

In developing the proposed criteria, we recognized that sometimes individuals come to hospitals seeking examination or treatment for medical conditions that could be emergency medical conditions, but present for examination or treatment at areas of the hospital other than the emergency department. In recognition of this possibility, and for other reasons explained in the preamble to the proposed rule (including the need to assure that an individual is not denied services simply because he or she failed to actually enter the hospital's designated emergency department), we proposed to clarify under proposed § 489.24(b) that an individual can "come to the emergency department," creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department (as we proposed to define that term) and request examination or treatment for a medical condition; or the individual can present elsewhere on hospital property in an attempt to gain access to the hospital for emergency care (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for what they believe to be an emergency medical condition.

Because of the need to clarify the applicability of EMTALA to a particular individual depending on where he or she presents on hospital property in order to obtain emergency care, we proposed to define "dedicated emergency department." We proposed that "dedicated emergency department" would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in § 489.24(b), and is either located: (1) on the main hospital campus; or (2) off the main hospital campus and is treated by Medicare under § 413.65(b) as a department of the hospital.

The EMTALA statute was intended to apply to individuals presenting to a hospital for emergency care services. Accordingly, we believe it is irrelevant whether the dedicated emergency department is located on or off the hospital main campus, as long as the individual is presenting to "a hospital" for those services. Therefore, we proposed in our definition of "dedicated emergency department" that such a department may be located on the main hospital campus, or it may be a department of the hospital located off the main campus. (We note that the proposed definition would encompass not only what is generally thought of as a hospital's "emergency room" but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, if these departments provide emergency psychiatric or labor and delivery services, or both, or other departments that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.)

In the May 9, 2002 proposed rule, we solicited public comments on whether this proposed definition should more explicitly define what is a "dedicated emergency department" (67 FR 31472). Specifically, we sought comments on whether a "significant portion of time" should be defined more objectively; for example, in terms of some minimum number or minimum percent of patients (20, 30, 40 percent or more of all patients seen) presenting for emergency care at a particular area of the hospital in order for it to qualify as a dedicated emergency department. As an alternative, we proposed considering a qualifying criterion that is based on determining whether the facility is used "regularly" for the evaluation or treatment of emergency medical conditions, and how we could define "regularly." We further sought comments from hospitals, physicians, and others on how hospitals currently organize themselves to react to situations in which individuals come to a hospital requesting a screening examination or medical treatment, or both.

C. Summary of Public Comments and Departmental Responses

1. General Support

Comment: Many commenters supported our proposed revised definition of "dedicated emergency department." The commenters believed the proposed revised definition is clear and did not need to be further revised.

Response: We appreciate the support of the commenters and have taken their views into account in considering the comments of those respondents who recommended revisions.

2. Objective Test of "Significant Portion of the Time"

Comment: Some commenters believed that an objective test (such as a percentage of emergency patients seen or treated for emergency medical conditions) to determine dedicated emergency department status would reduce confusion in the provider industry. Several other commenters stated that while a finite, objective test, such as a standard of 20, 30, 40 percent or more of all patients seen, would be desirable because of the certainty and consistency it would provide in determining a "significant portion of the time" for purposes of "dedicated emergency department" determination, the commenters believed the percentages cited by us are too low.

One commenter asked us to clarify what is meant by patients who "seek emergency care" in our discussion of whether "significant portion of the time" should be defined more objectively. For instance, the commenter stated the view that while many patients present for immediate care of nonemergency problems (and these patients must be screened for an emergency under EMTALA regulations), they should not be counted in determining whether a department is considered a dedicated emergency department.

Response: After consideration of these comments and the following related comments in this section VII.C. of this preamble, we believe that providing an objective criterion as part of the definition of "dedicated emergency department" for purposes of EMTALA will provide predictability and consistency to the health care industry, as the commenters suggest. Therefore, as

one part of the definition of "dedicated emergency department," as described in more detail below, we are specifying in this final rule that a department or facility that does not otherwise qualify as a "dedicated emergency department" based on State licensure or the way it is held out to the public will nevertheless be considered to be a dedicated emergency department if, during the calendar year immediately preceding the calendar year in which a determination is being made, based on a representative sample of patient visits that occurred during that calendar year, the department or facility provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We adopted this definition because we believe it adds the element of objectivity requested by many commenters and thus enables hospitals to know in advance whether they will be subject to EMTALA. We included a reference to a "representative sample" of visits for two reasons. First, we believe any determination under this definition must be based on information that accurately represents the type and mix of services delivered by the department or facility over a period of time, not merely during certain parts of the year. However, we also recognize that the large number of visits provided by some departments or facilities will make it a practical necessity to sampling techniques to obtain information on the type of care furnished instead of attempting to review all records of all visits by all patients during a year. Therefore, we intend to issue instructions, through interpretative guidelines, to our surveyors on how to determine such a representative sample. In addition, we may develop a series of questions and answers for posting on our website that will provide further clarification and guidance to providers.

In response to the comment regarding visits for the care of nonemergency problems, we agree that such visits should not normally be counted as being for the treatment of emergency medical conditions. However, as discussed in section VIII. of this preamble, individuals who suffer an unexpected emergency medical condition after they arrive at the hospital for an outpatient visit but before they begin an outpatient encounter and individuals whose appearance or behavior would cause a prudent layperson observer to believe they need examination or treatment for an emergency medical condition would be counted toward the "one-third" standard.

Comment: One commenter recommended that we use the term "regularly" instead of "a significant portion of the time" in the definition of dedicated emergency department. The commenter opposed the use of additional qualifying criteria (percentages) to determine whether a facility is used "regularly" for the evaluation and treatment of emergency medical conditions and believed that hospitals should have maximum flexibility to determine which part of their facility is appropriate for the delivery of emergency care.

Response: As explained in the response to the previous comment, we believe that an objective criterion relating to the percentage of visits for the treatment of emergency medical conditions, such as the one we are including in this final rule for purposes of EMTALA, provides needed predictability for those who are determining dedicated emergency department status. In addition, we believe this objective criterion in the definition of dedicated emergency department, along with the other two criteria in the definition in this final rule, provides the most flexibility for determining dedicated emergency department status, as the commenter suggested.

Comment: One commenter suggested that we not include an objective standard of "significant portion of the time" for the determination of a hospital's "dedicated emergency department." The commenter believed that an objective standard for "significant" may have the unintended effect of creating a benchmark that some providers might use to avoid their EMTALA obligations. For example, the commenter stated, if the standard for "significant portion of the time" is set at 30 percent, a hospital's labor and delivery department may determine that its staff spend only 15 percent of their time evaluating and treating outpatients who meet the regulatory definition of emergency medical condition. The commenter stated that if the majority of the staff's time is spent caring for inpatients in active labor, such a hospital may then decide that its labor and delivery department no longer has to provide an emergency medical screening examination to all women who present with contractions, since the department does not meet the objective criteria of being used a significant portion of the time for the initial evaluation and treatment for emergency medical conditions.

Another commenter did not support the percentage-based definition of dedicated emergency department proposed because the commenter believed "it potentially could result in a patient having or not having EMTALA protections based on a fraction of a percentage point and dependent on the accounting method chosen to determine volume." Also, the commenter believed that volumes fluctuate by days, weeks, and months, among other things. The commenter stated that fluctuating volume could potentially cause an area or department to move in and out of EMTALA coverage as the volume fluctuates.

Response: We agree with the commenters that using objective criteria in the determination of a hospital's dedicated emergency department may lead to some cases in which the standard is exceeded or not met by a narrow margin. However, this result is an unavoidable consequence of any objective standard. By assessing a facility's performance over a calendar year, we believe that the effects of seasonal or other variations in utilization will be mitigated.

In response to the comment concerning labor and delivery departments, we would like to clarify that CMS believes that EMTALA requires that a hospital's dedicated emergency department would not only encompass what is generally thought of as a hospital's "emergency room," but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, that provide emergency or labor and delivery services, or both, to individuals who may present as unscheduled ambulatory patients but are routinely admitted to be evaluated and treated. Because labor is a condition defined by statute as one in which EMTALA protections are afforded, any area of the hospital that offers such medical services to treat individuals in labor to at least one-third of the ambulatory individuals who present to the area for care, even if the hospital's practice is to admit such individuals as inpatients rather than treating them on an outpatient basis, *would* be considered a dedicated emergency department under our revised definition in this final rule. In such cases, whether the department of the hospital chooses to directly admit the emergency patient upon presentment is irrelevant to the determination of whether the department is a dedicated emergency department.

3. Nature of Care

Comment: Some commenters believed that the amount of time a facility is used for emergency screening and treatment is not relevant, and that it is the "nature of the care provided" that distinguishes it as a dedicated emergency department.

Response: We appreciate the comment concerning the "nature of the care provided" as determinative of meeting the definition of "dedicated emergency department" rather than the amount of time a facility is used for emergency screening and treatment. However, if we used the suggested language of "nature of the care provided" as the standard for determining "dedicated emergency department" status, we believe that treatment for one emergency case by one hospital clinic would meet the suggested standard. We believe that the suggested standard is too general in its reach and would encompass too many departments of hospitals. Therefore, we are not adopting the commenters' proposed language.

4. State Law Criterion

Comment: Several commenters suggested that "dedicated emergency department" status should be determined by State law in the State in which the hospital is located. Another commenter suggested that we define "dedicated emergency department" as any facility licensed by the State in which it is situated as an emergency department. The commenter stated that this would avoid the confusion as to whether urgent care or walk-in clinics do or do not devote a "significant portion of time" to the provision of emergency services.

Response: As explained under section VII.D. of this preamble, based on consideration of all of the comments received, in this final rule we are revising the proposed definition of "dedicated emergency department" to state that a facility licensed by the State as an emergency department will be recognized as such under Federal EMTALA rules. However, because of the variations in State licensure laws, we do not agree that *only* facilities that are licensed as emergency departments by the State should be considered dedicated emergency departments for purposes of EMTALA, and have therefore included other criteria for dedicated emergency department status, as specified in this final rule.

5. Held Out to the Public Standard

Comment: Many commenters agreed with statements in the preamble of the proposed rule to the effect that a "held out to the public standard" is appropriate for determining "dedicated emergency department" status. One commenter specifically suggested that a "dedicated emergency department" should be defined as "the department of a hospital that is held out to the public as the appropriate place to go for the examination and treatment of emergency medical conditions as defined in this section."

Similarly, another commenter stated that a "24/7" rule with routine emergency care may be more appropriate to designating a "dedicated emergency department" rather than our proposal of tracking patients and developing some minimum percentage of emergency patients. The commenter stated that if the area is not open and staffed on a continuous basis, and it is not held out to the public as such, then it should *not* be considered a dedicated emergency department.

Response: As explained in section VI.D. of this preamble, we are revising the proposed definition of "dedicated emergency department" in several areas. In the revised definition of dedicated emergency department that we are adopting in this final rule, we state that a department or facility that is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment will be considered to be a dedicated emergency department. Consistent with what we have stated above, we believe that most provider-based urgent care centers that are held out to the public as such will meet the revised definition of dedicated emergency department for purposes of EMTALA.

6. Labor and Delivery Departments and Psychiatric Units

Comment: Several commenters addressed our clarification in the preamble of the proposed rule at 67 FR 31472 that other types of hospital departments, such as labor and delivery and psychiatric units, could qualify as a dedicated emergency department for purposes of EMTALA under our proposed definition.

One commenter stated that if a hospital has a department held out to the public as the place to go for a labor or psychiatric emergency medical condition, that department should fall under the definition of "dedicated emergency department" for purposes of EMTALA.

Two commenters stated that it was unclear which of the EMTALA requirements (such as the EMTALA log) would apply to the labor and delivery unit and the psychiatric unit that meet the definition of "dedicated emergency department." In addition, these commenters asked whether EMTALA would apply to all patients who present to these locations or only to obstetrical and psychiatric patients who present under orders of their physicians at the locations.

Response: As explained further below, under the revised definition in this final rule, departments of the hospital will be considered to be "dedicated emergency departments" if they are held out to the public as places that provide care for emergency medical conditions on an urgent, nonappointment basis. These departments will be subject to EMTALA requirements applicable to dedicated emergency departments, including requirements related to maintenance of an emergency department log and on-call requirements. Individuals who present at these locations and request examination or treatment for a medical condition or have such a request made on their behalf must be screened under EMTALA and, if an emergency medical condition is determined to exist, provided necessary stabilizing treatment, because these locations are dedicated emergency departments.

We note that the dedicated emergency department to which an individual presents does not necessarily have to be the one to do EMTALA screening and stabilization. For example, if a man with cold symptoms or another medical condition were to seek treatment in the obstetrics and gynecology department rather than the general emergency department, this presentation would create an EMTALA obligation for the hospital, but the hospital would not be prohibited from transporting the individual to its general emergency department for screening and stabilization if that action were medically indicated.

7. Use of Arizona State Bill Language Defining Freestanding Urgent Care Center

Comment: One commenter cited language of a State bill (Arizona SB1098 (1999)) that, if enacted, would amend the Arizona State statutes to create standards in Arizona for "freestanding urgent care centers." The commenter suggested that we adopt the legislative language for a "freestanding urgent care center" as the Medicare definition of "dedicated emergency department." Specifically, the commenter suggested that the definition state:

An "emergency department" means a medical facility that, regardless of its

posted or advertised name, meets the following requirements:

(a) Is a department of a hospital and is intended to routinely provide unscheduled medical services; or

(b) Meets any one of the following requirements:

(1) Is open 24 hours a day to provide unscheduled medical care, excluding, at its option, weekends or certain holidays;

(2) By its posted or advertised name, give the impression to the public that it provides medical care for urgent, immediate or emergency conditions; or

(3) Routinely provides ongoing unscheduled medical services for more than 8 consecutive hours for an individual patient.

Response: We have considered this suggested Arizona bill language defining urgent care centers for the State and believe it has merits for further revision of the CMS definition of "dedicated emergency department," with some modification.

Under subparagraph (2) of the revised definition in this final rule, we are adopting as one of three options that a "dedicated emergency department" may be any department or facility of a hospital, regardless of whether it is located on or off the main hospital campus, that is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We have not limited the definition to a hospital "department" because we do not believe it would be appropriate to exclude facilities that otherwise function as dedicated emergency departments from that definition solely because they may not fully meet the requirements for departments of providers in 42 CFR 413.65.

Second, under subparagraph (3) of the revised definition in this final rule, we are adopting the criterion that during the calendar year immediately preceding the calendar year in which a determination is being made, based on a representative sample of patient visits that occurred during that calendar year, the department or facility provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We are not using the Arizona bill 24-hour or 8-hour requirements because we believe an objective measure based on outpatient visits for the treatment of emergency medical conditions will be easier to understand and implement and better reflects the operating patterns of some emergency departments, including those at small or rural hospitals, or both, that may not offer treatment for emergency medical conditions continuously on a 24-hour, 7 days a week basis. (The hospital CoPs governing emergency services of hospitals (§ 482.55) and CAHs (§ 485.618) do not require that emergency departments be operated continuously. Under some circumstances, such as local shortages of emergency care personnel or limited demand for emergency services, hospitals and CAHs may choose to open and staff their emergency departments on less than a 24-hour, 7 days a week basis.)

8. Urgent Care Centers

Comment: Many commenters were concerned that hospital "urgent care centers" or "acute care centers" would be included, inappropriately, as "dedicated emergency departments" for purposes of EMTALA. The commenters stated that urgent care centers "are capable of responding to an urgent need, but not an emergency medical condition."

Several commenters suggested that only those urgent care centers that are functioning and holding themselves out to the public as an emergency department should be considered a dedicated emergency department for purposes of EMTALA.

Response: We believe it would be very difficult for any individual in need of emergency care to distinguish between a hospital department that provides care for an "urgent need" and one that provides care for an "emergency medical condition" need. Indeed, to CMS, both terms seem to demonstrate a similar, if not exact, functionality. Therefore, we are not adopting the commenters' suggestion to except urgent care centers from dedicated emergency department status. As we have discussed above, if the department or facility is held out to the public as a place that provides care for emergency medical conditions, it would meet the definition of dedicated emergency department. An urgent care center of this kind would fall under this criterion for dedicated emergency department status.

Although not specifically stated in a comment, an underlying issue is that urgent care centers, participating in Medicare through a hospital, and which operate as satellite facilities off the main hospital campus, would meet the current definition of a dedicated emergency department, but would generally not have the capacity on site to treat patients who had been screened and determined to have serious emergency conditions. In this situation, some might argue that it would be inappropriate for such a facility to refer a patient in an unstable condition to the main hospital campus (which could be 30 miles or more away and involve a lengthy ambulance ride) rather than to a nearby hospital that would be able to treat a patient.

Both under past and current rules, a transfer from an urgent care center to a nonaffiliated hospital is allowed under EMTALA where the facility at which the individual presented cannot stabilize the individual and the benefits of transfer exceed the risks of transfer and certain other regulatory requirements are met. Thus, our rules permit a satellite facility covered under the definition of dedicated emergency department, in this example, to screen and determine whether the case is too complex to be treated on site, that a lengthy ambulance ride to an affiliated hospital would present an unacceptable risk to the individual, and then conclude that the benefit of transfer exceeds the risk of transfer. In this case, the satellite facility could then transfer the individual to an appropriate nearby medical facility.

9. Evaluation and Treatment Issue

Comment: One commenter was concerned about the "evaluation *and* treatment" aspect of our proposed "dedicated emergency department" definition, and suggested that the reference to evaluation would make the definition overly inclusive, since an ambulatory clinic might have no patients *treated* as emergencies, but many *evaluated* (and ruled out) for emergencies. The commenter believed that part of *any* prudent ambulatory practice is to consider first the possibility of an emergency with *all* patients who are seen. The commenter suggested dropping the "evaluation and" portion of the definition to rely exclusively on an area's treatment of actual emergencies as the criterion.

Response: We agree that reference to evaluation may make the definition of "dedicated emergency department" overly inclusive, in that it would count any individuals coming to emergency rooms who are evaluated but not treated for such conditions to rule out emergency medical conditions. Therefore, we are limiting the objective criterion in the third part of the "dedicated emergency department" definition in this final rule to a department or facility that provides at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

10. Prudent Layperson Observer Standard

Comment: Two commenters expressed opposing opinions regarding our language at 67 FR 31477 of the preamble portion of the proposed rule that stated that the definition of "dedicated emergency department" would also be interpreted to encompass those off-campus hospital departments that would be perceived by a prudent layperson as appropriate places to go for emergency care. One commenter believed that while the prudent layperson standard makes sense as it relates to the assessment of an individual's *medical condition*, it is less appropriate with respect to an individual's assessment of an appropriate *site of service*. The commenter stated that such assessments would likely vary, depending on factors such as perceived seriousness of the individual's condition, and urged CMS to adopt an objective test to avoid the uncertainty inherent in a "prudent layperson standard" for determinations of dedicated emergency department status.

Another commenter supported our proposed adoption of the "prudent layperson standard" in determining whether a facility is a dedicated emergency department and stated that the prudent layperson standard is preferable to the "significant portion of the time" or "regularly" definitions or standards.

Response: We believe that our revised definition of "dedicated emergency department" specified under section VII.D. of this final rule establishes an objective standard of determination. For instance, we believe it is an objective standard of dedicated emergency department status whether or not an emergency department is licensed by the State. We also believe that it is an objective standard if a hospital department holds itself out to the public as providing emergency care.

We understand the comment concerning an individual's assessment of an appropriate site of service. However, in view of the revised "dedicated emergency department" definition we are adopting in this final rule, we believe the prudent layperson standard is unnecessary for assessment of an area of the hospital as a dedicated emergency department. We believe our revised criteria for such status will permit the status of departments or facilities to be objectively determined.

11. Specially Equipped and Staffed Area

Comment: Several commenters addressed the "specially equipped and staffed area of the hospital" part of the proposed definition of "dedicated emergency department." One commenter, a hospital, stated that it has a main campus and several off-site locations, all of which are considered departments of the hospital and that none of these off-site departments are dedicated to the provision of emergency care. They also indicated that none of the staff at these off-campus departments are qualified to provide such care. One commenter believed our definition of "dedicated emergency department" should incorporate a provision that staff be specially trained in providing emergency medical care.

Another commenter requested that we clarify the terms "specialized staff" and "specialized equipment" in the proposed "dedicated emergency department" definition. The commenter suggested that "true" emergency departments have coding equipment and coding staff who know how to assign appropriate billing codes.

Several commenters believed that we should clarify that CMS will apply EMTALA only if a site is functioning as a dedicated emergency department. Another commenter stated that the obligations of EMTALA should apply to those hospital departments or other off-site locations that provide "traditional" emergency department services.

Response: As we explained earlier, based on our review of comments on the proposed definition of "dedicated emergency department," we are adopting an alternative definition of that term that does not include a reference to special equipment or staffing. Therefore, we have not attempted to further define "specialized staff" or "specialized equipment" in this final rule.

We agree with the latter comments, but the range of comments received on the definition of a dedicated emergency department included in our proposed rule illustrates that there are varying differences in opinion as to what "functioning as a dedicated emergency department" and "traditional emergency department services" mean. Therefore, we do not believe these phrases alone are sufficient to define a dedicated emergency department. EMTALA applies not only to dedicated emergency departments but also to presentments for emergency care anywhere on hospital property.

Comment: One commenter brought to our attention a contradiction in the preamble to the proposed rule when we discuss the definition of "dedicated emergency department" at 67 FR 31472. On the one hand, the commenter recognized that we proposed to define "dedicated emergency department" as an area that is "specially staffed and equipped" for emergency care and that "is used a significant portion of the time" for evaluation of patients for emergency medical conditions. However, the commenter pointed out that, in the same paragraph, CMS proposed that EMTALA applicability also be extended to hospital departments "that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis." Because the "held out to the public" test was not included in the proposed regulation text, the commenter requested clarification on this point.

One commenter believed that only an area of the hospital with an "Emergency" sign or a "well-accepted synonym in its title" should be impacted by the EMTALA regulations.

Response: As noted earlier, and as explained more fully in section VII.D. of this preamble, we are adopting a revised definition of "dedicated emergency department" that does not reference special equipment or staffing, but does recognize departments or facilities that are held out to the public as places that provide care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We believe this revised definition will resolve any uncertainty about the "held out to the public" test.

We agree that use of the term "emergency" or a well-recognized synonym in a facility's signage would help to identify how the facility is held out to the public and will keep this comment in mind as we develop interpretative guidelines for EMTALA surveys. However, we are not including the suggested language in the final rule because we are concerned that it could be overly prescriptive.

12. Unscheduled Appointments Criterion

Comment: Several commenters addressed the issue of defining dedicated emergency department as one that accepts unscheduled appointments. One commenter suggested that the definition of "dedicated emergency department" should focus on why the patient is present at the hospital's emergency department. The commenter suggested that the definition should include any location that the hospital holds out as open to evaluate patients seeking unscheduled evaluation or treatment for a medical condition.

Similarly, another commenter recommended that we revise the definition of dedicated emergency department to state that it is a specially

equipped and staffed area of the hospital that is primarily dedicated to "unscheduled" evaluation and treatment of outpatients for emergency medical conditions.

One commenter suggested that our proposed definition of dedicated emergency department be revised to specify that departments of the hospital that accept walk-in or unscheduled patients for assessment are deemed to be dedicated emergency departments for the purposes of EMTALA. The commenter stated that this definition would exempt routine clinics or hospital-based physician offices that function on an appointment-only basis, administrative areas, inpatient units, and laboratory areas that provide testing but do not provide assessment or diagnosis services for patients.

Another commenter asked us to include places that are "held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis' under the definition of dedicated emergency department. This suggestion would include the labor and delivery department of a hospital, but would exclude outpatient clinics that permit "walk-in patients", according to the commenter.

The commenter suggested that "dedicated emergency department" be defined as any area of the hospital that provides more than 10 percent of its nonscheduled patients treatment for outright emergencies.

Response: We agree that the practice of accepting patients without requiring appointments is an important indicator of emergency department status. After consideration of all of the comments on this issue, we are adopting in this final rule a criterion in the definition of "dedicated emergency department" that permits a department or facility to be considered a dedicated emergency department if it is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

13. Related Definition of "Hospital With an Emergency Department"

Comment: One commenter requested that we amend the proposed regulatory text at § 489.24(a), consistent with our proposed definition of "dedicated emergency department," to state that EMTALA requirements apply to a hospital that has *a dedicated* emergency department. Other commenters suggested that our proposed definition of "hospital with an emergency department" at § 489.24(b) should either be deleted or revised so that it is defined as a "hospital with a dedicated emergency department," to make it consistent with our definition of "dedicated emergency department."

Response: We considered the suggestion that we amend the "Application" paragraph of § 489.24(a) to limit EMTALA applicability to hospitals with dedicated emergency departments. However, "hospital with an emergency department" is a term of art from section 1867 of the Act that we have separately included in the definitions under § 489.24(b) to mean generally "a hospital that offers services for emergency medical conditions." Thus, we believe it would be preferable to keep the statutory language "hospital with an emergency department" in the Application section in the regulation text. To clarify our policy in this area, we are revising the definition of "Hospital with an emergency department" under § 489.24(b) to state that it means a hospital with a dedicated emergency department as defined in § 489.24(b).

14. Other Related Suggested Revisions

Comment: One commenter recommended that the last sentence in proposed paragraph (1) of the definition of "Comes to the emergency department" in § 489.24(b) be revised to read:

"In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for an *emergency* medical condition." [New language is underlined.]

(As proposed, this definition would require only that the prudent layperson observer believe that the individual needs examination or treatment for a *medical* condition.)

Response: Section 1867 of the Act requires a hospital to provide examination and necessary stabilizing treatment to any individual who "comes to the hospital" for emergency care. We are interpreting this statutory requirement to mean that individuals who present to areas of the hospital other than departments that are labeled "Emergency" must receive care from the hospital. We believe we have clarified this requirement in prior rulemakings and in the proposed rule. However, we are including this clarification in this final rule, as well, as part of the revised final definition of dedicated emergency department.

Comment: One commenter stated that if the proposed rules are adopted as final, on-call physicians and hospitals will refuse to accept transfers if the transfers will be received through the hospital dedicated emergency department. The commenter believed that if we apply EMTALA to patients admitted via the dedicated emergency department, it will create "perverse incentives" for hospitals and physicians to avoid admitting patients through the dedicated emergency department. The commenter stated: "On-call physicians will be reluctant to agree to accept patients for admission through the ED because then their stabilizing care of the patient in the hospital will subject them to civil monetary penalties and civil liability under EMTALA."

Response: It is a statutory requirement under section 1867(g) of the Act that receiving hospitals with special capabilities *must* accept the transfer of an individual with an unstable emergency medical condition. The receiving hospitals must accept the patients whether or not they are received through that hospital's dedicated emergency department—the EMTALA obligation for the receiving hospital transfers with the individual until the condition has been stabilized. Therefore, we do not believe on-call physicians and hospitals would refuse to accept transfers if the transfers are being received through the hospital dedicated emergency department, as the commenter believed. In particular, we hold this view because the EMTALA obligation is incurred at the time of arrival of the individual in accordance with an appropriate transfer, regardless of which door the individual enters or whether he or she is admitted immediately to the receiving hospital.

D. Provisions of the Final Rule Regarding Clarification of "Come to the Emergency Department"

For the reasons discussed throughout section VII. of this preamble, and after full consideration of the public comments received—

We are adopting as final the proposed organizational changes to § 489.24(a) on the application of EMTALA to include both the screening and stabilization or transfer requirements. (We note that later in this preamble under section X., we make an additional change to paragraph (a) to clarify that if the hospital admits the individual as an inpatient for further treatment after screening, the hospital's obligation under EMTALA ends.)

We are adopting paragraphs (1) and (2) under the proposed definition of "come to the emergency department" as final without changes.

We are revising the proposed definition of "dedicated emergency department" at § 489.24(b), to read as follows:

"Dedicated emergency department" means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;

(2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(3) During the calendar year immediately preceding the calendar year in which a determination under § 489.24 is being made, based on a representative sample of patient visits that occurred during that calendar year, it provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

We believe this revised definition of "dedicated emergency department" sufficiently addresses many of the suggested proposals submitted by the commenters on determining what is an emergency department for purposes of EMTALA.

We are revising the proposed definition of "hospital with an emergency department" to make it consistent with our revised definition of "dedicated emergency department."

VII. Applicability of EMTALA: Individuals Come to the Dedicated Emergency Department for Nonemergency Services (§ 489.24(c))

A. Background

We sometimes receive questions whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made on the individual's behalf for emergency medical evaluation or treatment. In view of the specific language of section 1867 of the Act and the discussion in section VII. of this preamble, which addresses the definition of a hospital's dedicated emergency department, we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual's behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition.

This does not mean, of course, that all EMTALA screenings must be equally extensive. The statute plainly states that the objective of the appropriate medical screening examination is to determine whether or not an emergency medical condition exists. Therefore, hospitals are not obligated to provide screening services beyond those needed to determine that there is no emergency medical condition.

In general, a medical screening examination is the process required to reach, with reasonable clinical confidence, a determination about whether a medical emergency does or does not exist. We expect that in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital's EMTALA obligation would thereby be satisfied.

B. Provisions of the Proposed Rule

To clarify our policy in this area, in the May 9, 2002 proposed rule (67 FR 31473), we proposed to redesignate paragraphs (c) through (h) of § 489.24 as paragraphs (d) through (i) (we proposed to remove existing paragraph (i)) and to add a new paragraph (c) to state that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an "emergency medical condition" as defined in the regulations. (In the May 9, 2002, proposed rule, we included an Example 1 as illustrative of application of this policy (67 FR 31473).)

C. Summary of Public Comments and Departmental Responses

Comment: Many commenters addressed our proposed clarification of presentments of individuals to dedicated emergency departments for nonemergency services at 67 FR 31473. One commenter stated that only those individuals requesting a "medical examination" be required to receive a medical screening examination by a physician or other qualified medical personnel. Another commenter recommended that EMTALA not apply to requests for nonemergency care inside the dedicated emergency department. One commenter believed that EMTALA should not apply to individuals coming to the dedicated emergency department to obtain previously scheduled or followup care.

Response: At 67 FR 31473, *et seq.*, of the preamble to the May 9, 2002 proposed rule, and also above, we explicitly clarified the issue concerning when an individual comes to a hospital's dedicated emergency department but no request is made on the individual's behalf for emergency medical evaluation or treatment. To address this scenario, we stated that hospitals are not obligated to provide screening services beyond those needed to determine whether an emergency medical condition exists. In addition, we proposed regulatory language to address the issue (proposed § 489.24(c)) to specify that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. Therefore, while EMTALA *does* apply to any individual who presents to a hospital's dedicated emergency department with a medical condition, it does so only to the extent that the individual must be screened for emergency medical conditions and supplied necessary stabilizing treatment.

Section 1867(a) of the Act clearly states that a hospital with an emergency department is required to provide an appropriate medical screening examination to every individual who presents at the hospital's emergency department with a medical condition. However, this screening is only necessary to the extent it takes the hospital to determine whether the individual has an emergency medical condition. Once the individual is screened and it is determined the individual has only presented to the dedicated emergency department for a

nonemergency purpose, such as followup care, the hospital's EMTALA obligation ends for that individual at the completion of the medical screening examination.

Comment: One commenter noted that, in many cases, individuals come to the dedicated emergency department of the hospital at which their regular physician practices and ask to be seen for nonemergency medical conditions that could appropriately be treated in the physician's office. The commenter asked whether, in these circumstances, a registered nurse or other qualified medical person on duty at the dedicated emergency department could perform a screening to rule out the presence of an emergency medical condition and, if it is determined that the patient does not have an emergency medical condition, refer the patient to the physician's office for treatment.

Another commenter stated that we should provide more guidance to allow busy emergency departments to refer patients without an "emergency medical condition" to primary care or specialty care clinics, or both.

Response: As stated in proposed § 489.24(c), if an individual comes to a dedicated emergency department and a request is made for examination or treatment of a medical condition, but the nature of the request makes it clear that the condition is not of an emergency nature, the hospital is required to perform only such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. Under the circumstances described by these commenters, the regulations would not require that such screening be done by a physician. On the contrary, we believe the individual could be screened by the appropriate nonphysician emergency department staff and, if no emergency medical condition is found to exist, referred to his or her physician's office for further treatment. Because we believe that proposed paragraph (c) clearly would permit such a referral, we do not believe a further regulations change is needed in this final rule to clarify this point. We note that while EMTALA does not require that all screenings be performed by an M.D. or D.O., any nonphysician (such as an emergency room registered nurse) who performs such screening should be an individual whom the hospital has designated as a "qualified medical person" for purposes of appropriate transfer certification under § 489.24(d)(1)(ii)(C) (redesignated in this final rule as § 489.24(e)(1)(ii)(C)).

Comment: Many commenters believed that the final rule should make clear that EMTALA does not apply to nonemergency services delivered in a dedicated emergency department and does not apply to a site other than a dedicated emergency department unless emergency services are requested.

Similarly, several commenters requested that we clarify that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department but does not request examination or treatment for a medical condition. Specifically, one commenter believed that we should clarify that hospitals are not required under EMTALA to provide medical screening examinations to individuals who request a medical service that is not examination or treatment for a medical condition, such as preventive care services, pharmaceutical services, or medical clearances for law enforcement purposes (such as blood alcohol tests required by police).

Response: We agree that a hospital has no obligation under EMTALA to an individual who comes to a dedicated emergency department if there is no request made by or on behalf of the individual for examination or treatment for a medical condition, and the individual's appearance or behavior would not cause a prudent layperson observer to believe that examination or treatment for a medical condition is needed and that the individual would request that examination or treatment if he or she were able to do so. We do not agree that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department for "nonemergency purposes" because such a purpose can be a medical one and the statute requires that a hospital perform a medical screening examination to any individual who presents to the emergency department with a medical condition. We agree with another commenter that if an individual presents to a dedicated emergency department and requests services that are not examination or treatment for a medical condition, such as preventive care services, the hospital is not obligated to provide a medical screening examination under EMTALA to this individual.

We note that pharmaceutical services in a dedicated emergency department may be for medical conditions and are, therefore, subject to EMTALA. We also wish to emphasize that the applicable principle is that presentments to a dedicated emergency department that meet other applicable criteria for EMTALA applicability will be considered to be subject to EMTALA if there is a request by or on behalf of the individual for examination or treatment for a medical condition, or the appearance or behavior of the individual would cause a prudent layperson observer to believe that the individual needed such examination or treatment and that the individual would request that examination or treatment if he or she were able to do so. Under this general principle, we will evaluate specific presentments, including requests by law enforcement authorities for medical clearance of persons who are about to be incarcerated or for blood alcohol or other tests to be used as evidence in criminal proceedings, on a case-by-case basis.

For example, an individual being maintained on psychotropic medication may come to an emergency department and complain of experiencing suicidal or homicidal urges because he or she has exhausted his or her supply of medication. If examination of the individual verifies the existence of an emergency medical condition and a supply of the patient's normal medication is required to stabilize that condition, then EMTALA would require that the hospital provide that medication. Of course, this does not mean that hospitals are required by EMTALA to provide medication to patients who do not have an emergency medical condition, simply because the patient is unable to pay or does not wish to purchase the medication from a retail pharmacy. We will address these types of issues in our interpretative guidelines.

Comment: One commenter noted that the issue of nonemergency patient care that takes place in the dedicated emergency department and overcrowding is a significant concern. The commenter stated that education aimed at the public by CMS to help them understand appropriate alternatives could contribute to reducing abuse.

Response: We agree that it is worthwhile to encourage patients to seek more appropriate sources of nonemergency care, and will take this into account as we develop EMTALA-related patient information and education material.

Comment: One commenter described a situation where hospitals use their emergency departments as an access point for registration purposes for the entire hospital after the normal registration area is closed. The commenter asked whether every individual would be covered under EMTALA and would require a medical screening even though not everyone is

coming to the emergency department seeking emergency medical treatment.

Similarly, another commenter stated that some hospitals, particularly rural ones, have found that it is most cost-effective for the hospital if it was configured to have one hospital entrance for patients who present for emergency care and for patients who do not present for emergency care. The commenter requested clarification on whether an EMTALA screening would be required for both types of patients who walk through that one entrance.

One commenter described a situation where a hospital operates ambulatory care centers and other facilities (such as primary care clinics) in tandem with the hospital's dedicated emergency department. The commenter believed the nondedicated emergency department of the hospital should be explicitly excepted from the definition of "dedicated emergency department" to address this "tandem" scenario.

Response: Regarding the first two comments, we agree that EMTALA does not apply to individuals who may pass through a hospital's emergency department but do not request examination or treatment for a medical condition, have such a request made on their behalf, or indicate through their appearance or behavior that examination or treatment for a medical condition would, in the judgment of a prudent layperson, be needed. We have not revised the final rule on this point, but intend to take it into account in developing interpretative guidelines and training materials for EMTALA surveyors. The third comment does not raise an issue of EMTALA policy, but merely shows that it will be necessary in some cases to determine exactly which physical locations constitute a hospital's dedicated emergency department. Such decisions will be made a case-by-case basis by CMS, based on information provided by the State survey agency.

Comment: One commenter suggested that we define whether there has been a request for examination or treatment under EMTALA by the resources that it would take to fulfill the request. The commenter gave an example of a request for unscheduled medical services that would require the service of a "qualified medical provider." The commenter stated that a request to take out stitches does not require a doctor or consultation with a doctor unless there is an additional complaint expressed.

Response: While this is an interesting suggestion, we believe that it is one that would be difficult to implement as an objective standard, because estimates of resources needed will necessarily be subjective. Therefore, we are not revising the final rule based on this comment.

Comment: One commenter believed that the standard stated at proposed § 489.24(c), "the nature of the request makes it clear the medical condition is not of an emergency nature", is too subjective. The commenter believed it would almost certainly invite State surveyors to second guess the determination of the qualified medical person.

Response: The purpose of conducting an EMTALA investigation is to ascertain whether or not the hospital has violated the requirements of § 489.24 or the related requirements of § 489.20. The survey is conducted in accordance with applicable CMS survey procedures and policies. The surveyor's recommendation of a violation determination is based on facts uncovered by the onsite investigation. The CMS regional office will make the final compliance determination with information obtained after the onsite investigation by the State survey agency.

Comment: Several commenters believed that triage of the individual presenting to the dedicated emergency department should be adequate for purposes of fulfilling EMTALA screening obligations. Specifically, one commenter did not believe that EMTALA should apply to individuals who present to the dedicated emergency department with no "significant distress or risk" as determined by triage of vital signs, and "who are comfortable and active" in a waiting area whereby they are well provided for while they are waiting for care or treatment.

Another commenter asked us to clarify whether vital signs must be obtained in every medical screening examination upon presentment to a hospital's dedicated emergency department.

Response: Section 1867(a) of the Act requires that individuals coming to the emergency department be provided a medical screening examination. The statute states:

"In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists."

Triaging is not equivalent to a medical screening examination. Triaging merely determines the "order" in which patients will be seen, not the presence or absence of an emergency medical condition. If the medical screening examination is appropriate and does not reveal an emergency medical condition, the hospital has no further obligation under § 489.24.

The decision to take vital signs may be required by the qualified medical professional or the hospital's emergency department's policies and procedures, or both. Vital signs are indicators of a patient's level of wellness and are valuable parameters to assist health professionals in making medical decisions concerning a patient's health needs. The patient's medical condition and the discretion of the practitioner will determine the need for monitoring of vital signs.

We do not believe the taking of a patient's vital signs is required for every presentment to a hospital's dedicated emergency department. As we have stated above, we expect that, in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency medical condition and the hospital's EMTALA obligation would thereby be satisfied.

Comment: One commenter requested that we modify proposed § 489.24(c) to provide that EMTALA imposes no minimum requirements for conducting medical screening examinations for cases falling within this paragraph. The commenter stated that the extent of the necessary examination is within the sole discretion of the qualified medical personnel performing the examination.

Response: As required by statute, we believe that a hospital *must* be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department for examination or treatment for a medical condition. While we will refrain from dictating what type of medical screening examination is required for each individual who presents to the dedicated emergency department, we believe that such screenings should be provided to each individual commensurate with the condition that is presented. As we have stated previously, this does not mean that all EMTALA screenings must be equally extensive. Hospitals are not obligated to

provide screening services beyond those needed to determine that there is no emergency medical condition.

We agree with the commenter that the extent of the necessary examination is generally within the judgment and discretion of the qualified medical personnel performing the examination. However, we note that the extent and quality of the screening by the qualified medical personnel are subject to review (by QIOs and State surveyors, for example), in the case of a complaint filed in accordance with section 1867 of the Act.

Comment: One commenter expressed concern about enforcement of the standard stated in proposed § 489.24(c). The commenter was concerned with the scenario in which it is later determined that an individual who had presented to the dedicated emergency department for such medical treatment as suture removal (as used in the example at 67 FR 31473) was, in fact, suffering from an emergency medical condition, and this emergency medical condition was not detected during this less extensive examination.

Response: As we stated in the proposed rule, hospitals are not obligated to provide screening services in the dedicated emergency department beyond those needed to determine that there is no emergency medical condition. We assume that qualified medical personnel or physicians will be performing the medical screening examination (however modified for the condition presented) to determine whether the individual is suffering an emergency medical condition. If it is later found that the individual *had* been suffering an emergency medical condition upon presentment to the dedicated emergency department but only asks for examination or treatment for the suture removal, or some lesser medical condition, and a complaint is filed for an alleged dumping in accordance with section 1867 of the Act, as stated above, the extent and quality of the screening by the qualified medical personnel would be subject to review by State surveyors to permit a determination to be made as to whether there was an EMTALA violation. We note that if, upon investigation of the alleged dumping, it is found that an adequate medical screening had been performed, the hospital would not be found liable under EMTALA.

Comment: One commenter asked why CMS needed to add a new § 489.24(c) to reinforce the requirement that all visits to the emergency department triggers EMTALA obligations, whether the individual is requesting emergency services or coming for nonemergency services. The commenter indicated that "any individual" who comes to the emergency department requesting care is already covered by EMTALA.

Another commenter stated that the real issue is when a hospital is required to perform a medical screening examination and when it is *not* required to perform one. The commenter indicated that staff of hospital emergency departments should be able to ask patients why they have come to the emergency department.

Response: In proposed § 489.24(c), and accompanying language in the preamble at 67 FR 31473, we attempted to provide some guidance to hospitals and physicians as to whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made for emergency medical evaluation or treatment. While we have repeatedly stated that we are refraining from dictating to hospitals standards for medical screening examinations, we hoped to address some concerns in the provider community that all EMTALA screenings must be equally extensive to each individual who presents to the dedicated emergency department. Rather, once an individual states that he or she is not at a hospital's dedicated emergency seeking emergency care as the commenter suggested, some brief questioning by qualified medical personnel of why the individual is there would be adequate to fulfill the requirements of the medical screening examination for purposes of EMTALA.

Comment: One commenter asked for clarification on whether EMTALA applies to individuals who seek outpatient services from the hospital on an unscheduled basis; for example, when an individual's physician directs the individual to go to the hospital to obtain laboratory and x-rays so that the physician may determine whether the individual has pneumonia or another condition.

Response: As explained elsewhere in this preamble, whether EMTALA applies to a specific individual will depend on whether the individual presents to the hospital's dedicated emergency department or to another area of the hospital, and on what type of request for examination or treatment is made. For example, an individual being sent to a hospital for specific diagnostic tests ordered by a physician outside the hospital would normally be directed by that physician to go to the hospital's laboratory and radiology department, not to the dedicated emergency department. In either setting, a simple request for a diagnostic test or image generally would not be considered a request for examination or treatment for what may be an emergency medical condition, so the hospital would have no EMTALA obligation to that individual. However, if the individual were to tell the hospital staff at the laboratory or radiology department that he or she needed emergency care, EMTALA would apply. EMTALA also would apply if, in the absence of a verbal request, the individual's appearance or behavior were such that a prudent layperson observer would believe the individual needed examination or treatment for an emergency medical condition and that the individual would request that examination or treatment if he or she were able to do so. Of course, in any actual complaint investigation, the State survey agency and, where appropriate, the QIO would review all actual relevant facts and circumstances to ensure that the regulations are applied appropriately in that case.

Comment: One commenter was concerned with the example at 67 FR 31473 of the proposed rule of a woman presenting to a hospital's emergency department with a request for suture removal. The commenter asked for information on the location of the outpatient clinic to which the qualified medical nurse refers the woman for the suture removal after the nurse screens the woman for any emergency medical conditions and also the timing of the clinic's evaluation. The commenter also stated that it would be helpful to clarify that "same-day on-campus referral" to another medical facility outside the dedicated emergency department is not mandatory for EMTALA purposes.

Response: By the commenter's request for information about the location of the outpatient clinic to which the patient is referred, we assume the commenter is interested in whether the outpatient clinic in the example is a department of the hospital (that is, provider-based). We do not see this as a particularly relevant fact, nor do we see the issue of timing of that outpatient clinic's evaluation to the issue of the applicability of EMTALA to that patient on the part of the hospital.

However, we do believe that it would not be an *EMTALA* obligation for the qualified medical nurse in the example to make the referral to the outpatient clinic upon finding that the woman does not have an emergency medical condition. Nevertheless, it would appear to us that good standards of practice would dictate that any qualified medical personnel screening the patient would refer the patient elsewhere for treatment of her obvious medical

condition, rather than simply sending her out of the emergency department upon finding that she did not have an emergency medical condition.

D. Provisions of the Final Rule

We are adopting, as final, the proposed provisions under § 489.24(c).

VIII. Applicability of EMTALA: Individual Presents at an Area of the Hospital's Main Campus Other Than the Dedicated Emergency Department (§ 489.24(b))

A. Background

Routinely, individuals come to hospitals as outpatients for many nonemergency medical purposes. If such an individual initially presents at an on-campus area of the hospital other than a dedicated emergency department, we would expect that the individual typically would not be seeking emergency care. Under most of these circumstances, EMTALA would therefore not apply (this concept is further discussed in section IX.B. of this preamble). However, questions have arisen as to whether a hospital would incur an EMTALA obligation with respect to an individual presenting at that area (that is, an on-campus area of the hospital other than a dedicated emergency department) who requests examination or treatment for what is believed to be an emergency medical condition, or had such a request made on his or her behalf.

B. Provisions of the Proposed Rule

In the May 9, 2002 proposed rule (67 FR 31473 and 31506), we proposed to specify in the regulations (§ 489.24(b), definition of "come to the emergency department") that, for an individual who presents on hospital property other than the dedicated emergency department and requests examination or treatment for what may be an emergency medical condition, a request would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. We further explained that if there is no actual request, for example, if the individual is unaccompanied and is physically incapable of making a request, the request from the individual would be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs treatment for an emergency medical condition. We stated that the proposed policy was appropriate because section 1867 protections should not be denied to those individuals whose need for emergency services arises upon arrival on hospital property at the hospital's main campus, but before they have presented to the dedicated emergency department.

Under the proposed policies, a request for examination or treatment by an individual presenting for what is believed to be an emergency medical condition at an on-campus area of the hospital other than the dedicated emergency department would not have to be expressed verbally in all cases. In some cases, the request may be inferred from what a prudent layperson observer would conclude from an individual's appearance or behavior. While there may be a request (either through the individual or a prudent layperson), thereby triggering an EMTALA obligation on the part of the hospital, this policy does not mean that the hospital must maintain emergency medical screening or treatment capabilities in each department or at each door of the hospital, nor anywhere else on hospital property, other than the dedicated emergency department.

Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2000 proposed rule (67 FR 31473). We also specifically solicited comments from hospitals and physicians on examples of ways in which hospitals presently react to situations in which individuals request emergency care in areas of the hospital other than the hospital's emergency department.

In the May 9, 2002 proposed rule, we also proposed that EMTALA would not apply to an individual who experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined in 42 CFR 410.2). We explained that we would consider such an individual to be an outpatient if he or she has begun an encounter (as that term is defined in 42 CFR 410.2) with a health professional at the outpatient department. Because such individuals are patients of the hospital already, we believe it is inappropriate that they be considered to have "come to the hospital" for purposes of EMTALA. However, we note that such an outpatient under our proposal who experiences what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs (as discussed in section XIV. of the preamble). Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the CoPs. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law (for example, State malpractice law and patient abandonment torts) as well as under general rules of ethics governing the medical profession. Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2002 proposed rule (67 FR 31473 through 31474).

In the proposed rule, we also proposed to retitle the definition of "property" at § 489.24(b) to "hospital property" and relocate it as a separate definition. In addition, we proposed to clarify which areas and facilities are not considered hospital property.

C. Summary of Public Comments and Departmental Responses

1. Presentation Outside the Dedicated Emergency Department

Comment: Regarding our proposed clarifications on the applicability of EMTALA for presentments on hospital property outside the dedicated emergency department, one commenter believed that, while the clarifications were necessary, "it is perhaps a sad indictment of our healthcare system that we actually have to mandate medical providers that someone unconscious must receive immediate medical care. * * * Anyone doing this sort of denial of care deserves more than an EMTALA citation." Many other commenters expressed concern about the absence from the proposed regulatory text of qualifying language that is set forth in the preamble of the proposed rule. Specifically, one commenter cited the proposed preamble language at 67 FR 31473 that states:

"* * * EMTALA is triggered in on-campus areas of the hospital other than a dedicated emergency department where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency." (Emphasis added.) The commenter further cited the preamble at 67 FR 31474:

"We are proposing that EMTALA would not apply to * * * an individual who * * * experiences what may be an emergency medical condition *if the individual is an outpatient* (as that term is defined at 42 CFR § 410.2) *who has come to the hospital outpatient department for the purpose of keeping a previously scheduled appointment.* We would consider such an individual to be an outpatient if he or she has *begun an encounter* (as that term is

defined at § 410.2) with a health professional at the outpatient department." (Emphasis added.)

The commenter then compared this language in the preamble to the proposed regulatory text at § 489.24(b) that would hold a hospital accountable under EMTALA when an individual has presented on hospital property other than a dedicated emergency department, "and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf. * * *" The commenter was concerned that neither of the preamble's purported tests for EMTALA's applicability outside of the dedicated emergency department that are quoted above is referenced in the proposed regulatory text: neither the test of whether the individual came to the hospital in an attempt to gain access to the hospital for emergency care, nor the objective test of whether the patient has begun an encounter with a health professional at the outpatient department. This commenter believed that the regulatory text should be revised to clearly state that EMTALA is not applicable to outpatients who have initiated an encounter with a health professional in a hospital outpatient department other than a dedicated emergency department.

Another commenter suggested that we substitute the term "member of the public" for "outpatients" in the definition of dedicated emergency department ("a dedicated emergency department would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of *outpatients* for emergency medical conditions"). The commenter believed that the clear implication of the definition is that an outpatient may be covered under EMTALA, a conclusion that is inconsistent with other provisions in the proposed rule.

Other commenters requested that we clarify that EMTALA would not apply when individuals arrive on the orders of their physicians, such as when a pregnant woman or a psychiatric patient arrives upon a physician's order either for testing or because he or she is in need of immediate medical care. In addition, some commenters believed that CMS should clearly state that only the Medicare hospital CoPs and not EMTALA would apply to individuals with scheduled outpatient appointments or procedures.

Another commenter disagreed with the CMS statement in the preamble to the proposed rule that EMTALA does not apply to "established patients" who need emergency care while on hospital property. The commenter stated that it may be impossible to distinguish such a patient from anyone else experiencing a similar emergency also on hospital property, and was concerned that the concept of excluding an established patient from EMTALA will raise many definitional and logistical issues.

One commenter believed that we intended for EMTALA not to apply in situations where the individual has arrived for an appointment, even if they had not yet been assisted. The commenter urged clarification on this issue.

One commenter stated that there may be occasions where individuals present to the hospital for outpatient services where *no* orders are necessary to provide services to the individual, such as annual mammograms or health fairs. The commenter requested that EMTALA should not apply to individuals in these circumstances.

Response: As we describe above, in the preamble to the May 9, 2002 proposed rule, we proposed that EMTALA would *not* apply to an individual who experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined at 42 CFR 410.2) who has come to a hospital outpatient department for the purpose of keeping a previously scheduled appointment. In response to the comments requesting further clarification of the text of the regulations, and in consideration of the role of the Medicare hospital CoPs in protecting the health and safety of hospital outpatients, we are revising the final rule to state that EMTALA does not apply to any individual who, *before* the individual presents to the hospital for examination or treatment for an emergency medical condition, has begun to receive outpatient services as part of an encounter, as defined in 42 CFR 410.2, other than an encounter that the hospital is obligated by EMTALA to provide. We believe this revised language sufficiently encompasses any individuals who come to a hospital to receive nonemergency services and have begun to receive those services. Such individuals would be included under this policy, regardless of whether or not they began the nonemergency encounter in order to keep a previously scheduled appointment or under orders of a physician or other medical practitioner. We also assume that specific mention of outpatient registration is unnecessary in the revised language because we believe all individuals who have begun an encounter under § 410.2 are registered outpatients in the hospital's records. This change is reflected in the revision of the proposed definition of "patient" under § 489.24(b) in this final rule. As we stated in the preamble to the proposed rule, we believe it is inappropriate to consider such individuals, who are hospital outpatients who have protections under the CoPs, to have "come to the hospital" for purposes of EMTALA as well, even if they subsequently experience an emergency medical condition.

We note that individuals who are already patients of a hospital and who experience emergency medical conditions are protected by existing Medicare hospital CoPs. We discuss these CoPs in greater detail in section XIII. of this final rule. Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the CoPs. In the January 24, 2003 **Federal Register** (68 FR 3435 through 3436), we describe the process by which we enforce compliance with these CoPs. For example, we explained that if our surveyors discover noncompliance with the hospital CoPs, "the hospital will be scheduled for termination from the Medicare and Medicaid programs." Thus, for violations of the CoPs, as well as for violations of EMTALA (compliance with which is a Medicare participation requirement) hospitals face the extreme sanction of termination from the Medicare program. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law as well as under general rules of ethics governing the medical professions.

In response to the comment concerning the individual who comes to the hospital for purposes of an annual mammogram or health fair, with or without an order or referral by a physician, that individual is not presenting to the hospital with a particular emergency medical condition. Therefore, EMTALA would not apply. We believe this is consistent with our policy stated elsewhere in this preamble.

Of course, where EMTALA applies to a particular individual who has presented to the hospital for examination or treatment for an emergency medical condition, EMTALA's application does not end just because the individual has begun an outpatient encounter; *only* screening and, where necessary, stabilization, admission for inpatient services, or appropriate transfer end the hospital's EMTALA obligation to the individual (see section VIII. of this preamble for further discussion of the issue of when an EMTALA obligation ends). The fact

that protections under the CoPs may later be afforded to an outpatient who is already protected by EMTALA does not end the individual's EMTALA protection.

In response to the commenter's concern that we incorporate the language regarding coming to the hospital in order "to gain access to the hospital for emergency care" into the regulation text, while in most emergency cases individuals will come to a hospital in order to gain access to emergency care at the hospital, not all emergency patients start out that way. Some individuals may come to the on-campus hospital property for reasons other than to seek medical services for themselves (examples would include a hospital employee, or a visitor of the hospital). Such individuals would not be protected by the hospital CoPs if they happen to experience what may be an emergency medical condition while on hospital property, since they are not hospital patients. Therefore, we are clarifying here that we consider such individuals to have "come to the emergency department." Under section 1867(a) of the Act, such individuals are protected by EMTALA and hospitals must provide them with screening and necessary stabilizing treatment.

To address the comment concerning the substitution of the term "outpatients" in the proposed definition of "dedicated emergency department", we mention the comment in this section of the preamble of this final rule because, as the commenter pointed out, it would appear to be inconsistent with our policy in our proposed regulations text at § 489.24 that EMTALA would not apply to any *patient*, as defined in proposed § 489.24(b), who would include "outpatients" as defined at § 410.2, and yet we would use the term "outpatients" in our application of EMTALA for individuals that present at dedicated emergency departments. In addition, we also proposed in the preamble to the proposed rule that EMTALA would not apply to outpatients with emergency medical conditions that arise during an encounter. We are clarifying in this final rule that EMTALA *will* apply to any individual who presents to the hospital for examination or treatment for an emergency medical condition, but EMTALA *will not* apply to individuals who have begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

In this final rule, in response to comments, we are revising our definition of "dedicated emergency department" at § 489.24(b) to specify that such a department is a unit in the hospital that meets at least one of three criteria, one of which is that it is any department or facility of the hospital that provides for the examination or treatment of emergency medical conditions for at least one-third of all of its outpatient visits, based on a representative sample of patient visits for the calendar year immediately preceding the calendar year in which a determination is being made. This revised language avoids using the term "individuals" or "member of the public" and would sufficiently encompass any person, including hospital staff who may become ill, who comes to a hospital's emergency department for medical care.

In addition, we are revising the proposed definition of "patient" under § 489.24(b) to indicate that EMTALA does not apply to an individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

Comment: One commenter asked us to clarify whether EMTALA is triggered for an individual who comes to the hospital as an outpatient for a scheduled appointment and who, after treatment has commenced, experiences an emergency medical condition, and is then moved to the dedicated emergency department for treatment. Similarly, the commenter asked whether an individual transported by the hospital to the dedicated emergency department from an off-campus department that is not a dedicated emergency department is an EMTALA patient upon arrival. The commenter asked whether individuals in these two settings should be handled differently.

Response: As we have described above, in this final rule, we are providing that individuals who have begun to receive outpatient services during an encounter are not protected under EMTALA if they are later found to have an emergency medical condition (even if they are then transported to the hospital's dedicated emergency department). These individuals are considered patients of the hospital and are protected by the Medicare hospital CoPs and relevant State law. In addition, as we describe below, individuals who present to a provider-based, off-campus department that is not a dedicated emergency department with emergency conditions are not protected by EMTALA, but rather by the hospital CoPs as well as relevant State law.

Comment: A number of commenters expressed concern about EMTALA applicability to individuals who present at a hospital for emergency care outside the dedicated emergency department. One commenter stated that establishing a "different set of expectations" for departments that are not dedicated emergency departments when an individual presents for care is likely to cause confusion and is asking potentially nonclinical persons to make clinical judgments they have no training to make. Another commenter stated that medical personnel cannot be at all hospital locations to conduct screening and stabilization services, and believed that we should revise how medical staff are required to respond to medical emergencies in nonemergency department locations.

Response: As we have expressed above, whether an individual presents for care at a hospital's dedicated emergency department, or elsewhere on hospital property, if EMTALA is triggered, the hospital has the same obligations to that individual. It is up to the hospital to determine how best to provide the screening and necessary stabilizing treatment to the individual who presented. In either case, the hospital is responsible for treating the individual within the capabilities of the hospital as a whole, not necessarily in terms of the particular department at which the individual presented. Whether the hospital sets up procedures to immediately transport the individual to the hospital's dedicated emergency department, or whether the hospital sets up procedures to send a "trauma crew" or "crash team" of physicians and nurses out to the individual on site, we do not believe it is appropriate for us to dictate to hospitals how best to treat individuals who present for emergency care in hospital departments other than dedicated emergency department locations.

In addition, we do not believe treatment of an emergency patient would involve having nonclinical hospital staff making determinations about an individual's medical condition; rather, we envision that, as stated above, hospitals would set up procedures to provide for emergency care to individuals who present in hospital departments other than dedicated emergency department locations on the hospital campus.

2. Prudent Layperson Standard

Comment: A number of commenters expressed concern about our proposed "prudent layperson" standard. We stated in the proposed rule that, for both presentments inside the dedicated

emergency department and also elsewhere on hospital property, a request for examination or treatment would be considered to exist if a *prudent layperson observer* would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition (or examination or treatment for a medical condition for presentments inside the dedicated emergency department).

Many other commenters supported our proposed prudent layperson standard; they believed that the standard would ensure that the obvious emergency situation would be addressed, even if the individual were unable to verbalize the request.

Several other commenters requested that we substitute the term "obvious implied request" or "implied request," instead of relying on the perceptions of a prudent layperson for individuals who are unable to articulate their needs.

Many commenters believed that hospitals must be on notice of an individual's presentment in order for EMTALA to be triggered to that individual. One commenter stated: "Because an EMTALA obligation is triggered by a patient-generated request, hospital personnel must be made aware of the individual's presence and observe the appearance or behavior or both of that person in order to respond appropriately. Additionally, all hospitals need policies that describe steps to be taken to assure that a person in clear need, for example, a visitor who collapses in the cafeteria, receives medical attention."

Several commenters requested that the final rule make clear that EMTALA does not apply to an individual presenting on on-campus hospital property other than a dedicated emergency department unless emergency services are requested.

Response: First, we agree with the commenters that hospital personnel must be aware of the individual's presence and observe the appearance or behavior, or both, of that person in order for EMTALA to be triggered. Obviously, the hospital must be on notice of the individual's existence and condition for any violation of the statute to take place. This also applies to presentments for off-campus dedicated emergency departments; only if the hospital's staff are aware of an individual's presence in the department for examination or treatment for a medical condition is EMTALA triggered.

We also agree with the commenters that EMTALA does not apply elsewhere on on-campus hospital property other than a dedicated emergency department unless *emergency* services are requested. As we clarified in section V.J.8 of the preamble of the May 9, 2002 proposed rule (67 FR 31473 through 31474), and also as we discuss in section IX. of the preamble, a request for treatment would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. Where there is no actual request because, for example, the individual is unaccompanied and physically incapable of making the request, the request from the individual will be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition.

However, to address the commenters who requested an "obvious implied request standard" instead of the "prudent layperson standard", we believe the prudent layperson standard is necessary for both presentments inside the dedicated emergency department and elsewhere on hospital property. We are concerned about the circumstance where hospital staff observe the appearance or behavior of an individual who clearly has an emergency medical condition, but do nothing to provide treatment for that individual.

In addition, the term "prudent layperson" is consistent with the Medicare and Medicaid programs, in general. We believe it is appropriate and realistic to utilize this objective standard in the EMTALA context as well, because it reflects a standard for judging whether the hospital should have acted—it does not shift control of events to any particular individual layperson.

Comment: One commenter who supported the prudent layperson standard suggested that the proposed regulatory language at paragraphs (1) and (2) under the definition of "comes to the emergency department" under § 489.24(b) is too broad and could encompass situations for which CMS did not intend EMTALA to apply. The commenter recommended that CMS modify the language in those paragraphs to state: "a request on behalf of the individual will be considered to exist if *the individual is unable to make the request and* a prudent layperson observer would believe. * * *" The commenter stated that an individual need not rely on the prudent layperson observer if he or she is able to request examination or treatment for himself or herself.

Another commenter requested that CMS limit application of the prudent layperson language to circumstances where the need for emergency services is clear and the individual cannot make the request and there is no one to make the request on behalf of the individual.

Response: We agree with the commenters that the prudent layperson standard is to be relied upon only in circumstances where the individual is unable to make the request for examination or treatment of himself or herself. However, we do not agree that a change in the regulatory language is needed. We believe that our proposed regulatory language in that section, which states: "*In the absence of such a request by or on behalf of the individual,* a request on behalf of the individual will be considered to exist if a prudent layperson observer * * *" (emphasis added), encompasses any situation in which an individual has come to the hospital and a prudent layperson observer would believe the individual may have an emergency medical condition and that the individual would request examination or treatment if he or she were able to do so, whether or not the individual is unaccompanied.

Comment: One commenter stated that hospital staff do not want to be in the position of interpreting the "prudent layperson" terminology. Another commenter was concerned that some members of a hospital's staff may not be "prudent laypeople" who are in the position of determining whether someone needs emergency care. For example, a hospital may employ a disabled worker to provide basic yard services. A third commenter stated that many hospitals use volunteers to staff courtesy desks to assist patient families and provide directions in and around the hospital. The commenter was concerned that requesting volunteer hospital staff to provide emergency care for individuals presenting at the hospital outside of the dedicated emergency department is "excessive." The commenter stated that if volunteers are assigned this responsibility, they may no longer provide volunteer services and the hospital would need to add paid staff, which would increase the cost of care. The commenter added that these volunteers or other staff would need training to comply with this new definition and responsibility.

Response: Our rationale for the prudent layperson standard is to determine whether an EMTALA obligation has been triggered toward a particular individual. It is a legal standard that would be used to determine whether EMTALA was

triggered—it is not meant for hospital staff, including volunteers, to be "interpreting" the prudent layperson standard. Rather, we foresee that in cases in which hospital staff or other individuals at the hospital have witnessed the behavior of the individual upon his or her presentation to the hospital, the prudent layperson standard will be applied to the facts (the appearance and behavior of the presenting individual) to determine if EMTALA had been triggered.

Comment: One commenter stated that EMTALA should apply only in situations where the prudent layperson believes the individual needs emergency examination or treatment, and not simply examination or treatment at some later date or time.

Response: We proposed the prudent layperson standard to apply to presentments both inside and outside the dedicated emergency department. Therefore, for presentments inside the dedicated emergency department, the proposed standard is that the prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a *medical condition*. For presentments on hospital property outside the dedicated emergency department, the prudent layperson would believe the individual needs examination or treatment for an *emergency medical condition*. However, we do agree with the commenter that the standard is that the prudent layperson would believe that the individual needs the examination or treatment at the time of the presentment (when the hospital is on notice of the individual's existence on hospital property), and not at a later date or time.

Comment: One commenter describes a scenario where an individual with a bad cough and wheezing visits a family member in the dedicated emergency department. The commenter believed that, even though the individual may need examination or treatment, the hospital should have no duty to offer or provide care unless that individual actually asks for care. The commenter indicated that in such a case it should not matter whether a prudent layperson observer would believe that the individual *needs* care.

Response: We agree with the commenter that the prudent layperson standard should not be applied so broadly as to mandate EMTALA screenings for individuals who are fully capable of making a verbal request for examination or for a medical condition, but elect not to do so. Inherent in such a standard is not only the notion that the individual's appearance or behavior would lead a prudent layperson observer to believe that the individual needs examination or treatment for a medical condition, but a belief by the prudent layperson that there has been no verbal request only because the individual's medical condition, or some other factor beyond the individual's control, such as a language barrier, makes a verbal request impossible. We are not revising the final rule based on this commenter's concern because we believe it is not feasible to attempt to codify all of the various conditions and circumstances under which a verbal request would not be possible. However, we will keep this concern in mind as we develop interpretative guidelines or other instructional material for State surveyors.

3. Determination of "What May Be an Emergency Medical Condition"

Comment: Several commenters did not agree with the language used in the regulatory standard for EMTALA applicability outside the dedicated emergency department that the presenting individual requests examination or treatment for *what may be* an emergency medical condition. One commenter stated that the universe of conditions that may be emergency medical conditions is extraordinarily broad and recommended that this standard be clarified to avoid unnecessary and excessive EMTALA obligations to individuals presenting outside of dedicated emergency departments. The commenter recommended that EMTALA is triggered outside of the dedicated emergency department only when the individual "requests examination or treatment for what more likely than not is an emergency medical condition."

Response: When we proposed the "what may be an emergency medical condition" language in the definition of "come to the emergency department" at § 489.24(b), we did so to clarify that an emergency medical condition would not actually have to *exist* upon examination of such an individual presenting outside the dedicated emergency department. Instead, the individual presenting (or the prudent layperson observer) must believe he or she needs emergency care. We do not believe it is necessary to adopt the commenter's suggested clarifying language. We believe we have provided sufficient explanation about "what may be an emergency medical condition" both in our response above and in the preamble to the proposed rule (67 FR 31473).

Comment: One commenter requested that CMS clarify that the proposed standard language "such a request would be considered to exist if the individual requests examination or treatment *for what the individual believes* to be an emergency condition" (67 FR 31473) (emphasis added), is an objective standard. The commenter was concerned about our enforcement of this standard; specifically, the concern was that the determination as to whether an EMTALA obligation has been triggered would hinge on a subjective belief that an emergency medical condition exists.

Response: EMTALA is triggered when there has been a *request* for medical care inside the dedicated emergency department or for emergency care on hospital property outside the dedicated emergency department. The request can only be made by or on behalf of the individual or the request from the individual would be considered to exist if a prudent layperson would believe the individual needs emergency care. We believe this standard for when EMTALA is triggered is based on objective criteria; that is, the act of the individual or someone acting on his or her behalf requesting medical care for what the individual believes or what the person accompanying the individual believes to be an emergency medical condition. It is also objective when the prudent layperson standard is considered in determining whether, based on the appearance, signs, and symptoms of the individual presenting to the hospital, a prudent layperson would believe that the individual has a medical condition (in the dedicated emergency department) or an emergency medical condition (in a nondedicated emergency department).

4. Other Issues

Comment: One commenter requested that we clarify that, although it may be appropriate for staff of the dedicated emergency department to leave the department in order to provide emergency medical treatment to an individual who has presented on hospital property outside the dedicated emergency department, it is not required that an emergency department "physician" leave to respond and provide treatment to an individual.

Response: Under these circumstances, EMTALA requires that the hospital must provide treatment to the individual within its capabilities; if the hospital lacks, for instance, sufficient specific staff, the hospital should must provide alternative means of treating such an individual, within its capabilities, or provide an appropriate transfer. Or if the hospital decides to send other medical staff rather than physician staff to an emergency patient who has presented on hospital property

outside the dedicated emergency department, that action is within the hospital's discretion. CMS would look to see what type of capabilities the hospital has in responding to such emergency cases and whether the hospital responded appropriately.

Comment: One commenter believed that having different EMTALA policies based on which door of the hospital the individual enters is fundamentally flawed and exacerbates the confusion about when the EMTALA duty has been met. The commenter requested that we simplify the issue by delineating that EMTALA applies in any case of any individual who comes to the dedicated emergency department and for whom a request for emergency care is made, until that individual is stabilized or admitted.

Another commenter found it confusing to have a separate definition of dedicated emergency department. The commenter stated that it is already well-established and accepted that any individual who arrives anywhere on hospital property, whether it is the emergency department or a sidewalk within 250 yards of the main building and requests care for a emergency medical condition triggers EMTALA obligations for the hospital. Therefore, the commenter added, it is immaterial whether or not an individual presents to a "dedicated emergency department," since arrival anywhere on a hospital campus automatically triggers EMTALA.

Response: As we explain in the discussion above regarding clarification of the definition of "dedicated emergency department," and also in the proposed rule, there has been much confusion on the applicability of EMTALA to individuals who present for emergency care, but do not make it to a hospital's emergency department. We have stated previously that an individual may not be denied emergency services simply because a person failed to actually enter a hospital's emergency department. That is, under certain conditions, an individual does not need to present at a hospital's emergency department in order to be protected by EMTALA.

Thus, in clarifying our policy, it is necessary to address *where* and under what conditions the individual is presenting in order to determine whether EMTALA is triggered. EMTALA is not triggered by a request for physical therapy (that is, for a *medical condition*) at the hospital's on-campus physical therapy department. However, EMTALA would be triggered by that same request inside a hospital's dedicated emergency department, since the statute clearly states that requests for examination or treatment of "medical conditions" at emergency departments trigger EMTALA. By the same token, request for treatment of a gunshot wound at the on-campus radiology department would also trigger EMTALA, since a gunshot wound is clearly an "emergency medical condition."

We believe that, in making our clarification of "dedicated emergency department," we are assisting in clarifying a hospital's responsibilities under EMTALA to screen and provide necessary stabilizing treatment to an individual who comes to a hospital, presenting either at its dedicated emergency department or elsewhere on hospital property; that is, we are clarifying at what point EMTALA is *triggered*. The "which door" concept is integral to this analysis. An individual can "come to the emergency department" under the statute creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department and request examination or treatment for a *medical condition*; or the individual can present elsewhere on hospital property (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for an *emergency medical condition*.

D. Provisions of the Final Rule

In summary, in consideration of the comments discussed under this section, in this final rule, we are—

- Adopting as final the proposed definition of hospital property under § 489.24(b) with one clarifying editorial change concerning the language in the proposed definition about excluding other areas or structures that are located within 250 yards of the hospital's main building." We are removing the proposed phrase "located within 250 yards of the hospital's main building" because the phrase is duplicative of the language in the definition of "us" at § 413.65(b). "Campus" includes the 250 yards concept in its definition; therefore, by referencing § 413.65(b) in the definition of "hospital property" under EMTALA, we are already including the concept of 250 yards.
- Adopting as final the proposed definition of patient under § 489.24(b), with a modification to reflect the nonapplicability of EMTALA to an individual who has begun to receive outpatient services at an encounter at the hospital other than an encounter that the hospital is obligated by EMTALA to provide.

IX. Scope of EMTALA Applicability to Hospital Inpatients (§ 489.24(d)(2))

A. Background and Provisions of the Proposed Rule

While most issues regarding EMTALA arise in connection with ambulatory patients, questions have occasionally been raised about whether EMTALA applies to inpatients. In late 1998, the United States Supreme Court considered a case (*Roberts* v. *Galen of Virginia*, 525 U.S. 249 (1999)) that involved, in part, the question of whether EMTALA applies to inpatients in a hospital. In the context of that case, the United States Solicitor General advised the Supreme Court that the Department of Health and Human Services (DHHS) would develop a regulation clarifying its position on that issue. After reviewing the issue in the light of the EMTALA statute, in the May 9, 2002 proposed rule (67 FR 31475), we proposed that EMTALA would apply to admitted emergency patients until they have been stabilized.

As we noted in the proposed rule, once a hospital has incurred an EMTALA obligation with respect to an individual, that obligation continues while the individual remains at the hospital, so that any transfer to another medical facility or discharge of the individual must be in compliance with the rules restricting transfer until the individual is stabilized under existing § 489.24(d). In these cases, we stated that the hospital continues to be obligated under section 1867 of the Act, irrespective of the inpatient admission, and that an individual's emergency medical condition will be considered to have been stabilized only when the criteria in § 489.24(b) are met. That is, the individual's condition must be such that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during a transfer of the individual from the facility or, if the patient is a pregnant woman who is having contractions, that the woman has delivered the child and the placenta. We believed that such a policy would provide protections under the statute to those patient populations that are most vulnerable—individuals who are experiencing emergency medical conditions (including women in labor who are admitted to the hospital).

In addition, we proposed to clarify in the proposed rule that an individual who goes in and out of apparent stability with sufficient rapidity or frequency would not be considered "stabilized" within the meaning of § 489.24; transient stability of such an individual does not relieve the hospital

of its EMTALA obligation (67 FR 31475). We proposed that such an individual would continue to be covered by EMTALA until the individual's overall medical stability with respect to all conditions is achieved.

Based on an analysis of the statute (sections 1867(b)(1)(A), (c)(2), and (e)(1) of the Act) and the legislative history (131 Cong. Rec. 28.587 and 28.588 (1985) and H.R. Rept. No. 241 (I)(1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.), we explained why we believed that EMTALA continued to apply to admitted emergency patients until they have been stabilized or appropriately transferred.

For a detailed discussion of the proposed policy on the applicability of EMTALA to admitted patients with unstabilized emergency medical conditions, see the preamble to the May 9, 2002 proposed rule at 67 FR 31475.

In addition, except for the limited circumstances described above, we proposed to clarify that EMTALA does not apply to nonemergency hospital inpatients. Most hospital admissions do not consist of emergency cases. In most cases, an individual who comes to the hospital and requests admission does so to obtain elective (nonemergency) diagnosis or treatment for a medical condition. We noted that once a hospital admits an individual as a patient, that hospital has a variety of other legal, licensing, and professional obligations with respect to the continued proper care and treatment of such patients.

We proposed to redesignate paragraph (c) of § 489.24 as paragraph (d), and include stabilization requirements under a new proposed § 489.2(d)(2). (Proposed redesignated paragraph (d) was proposed to be revised further as explained in section V.K.9.b. of the preamble of the May 9, 2002 proposed rule (67 FR 31456).) In addition, we proposed to include the requirements for nonapplicability of EMTALA to nonemergency hospital inpatients under proposed redesignated § 489.24(d)(2).

B. Summary of Public Comments and Departmental Responses

1. Applicability of EMTALA to Inpatients

Comment: Many commenters expressed concern about our clarification in the proposed rule on the applicability of EMTALA to hospital inpatients. Some commenters agreed with the entirety of the CMS proposed policy that a hospital's EMTALA stabilization and transfer obligations should continue to apply to an admitted emergency patient. One commenter stated that "this clarification will allow hospitals to find an endpoint to their EMTALA obligations, specifically when the patient's emergency [medical] condition is stabilized."

However, many commenters expressed the view that EMTALA should not apply to any inpatient, even one who was admitted through the dedicated emergency department and for whom the hospital had incurred an EMTALA obligation to stabilize. Several commenters noted that hospitals have extensive CoPs responsibilities with respect to inpatients or State tort law obligations, and argued that the hospital's assumption of responsibility for the individual's care on an inpatient basis should be deemed to meet the hospital's obligation under EMTALA. Many commenters recommended that the regulations be revised to state that a hospital's EMTALA obligation may be met by admitting an individual as an inpatient.

Two commenters stated that CMS has "no evidence there is a current problem" for the dumping of inpatients with emergency medical conditions. Therefore, the commenters believed EMTALA applicability should end upon inpatient admission.

One commenter (a group of neurosurgeons and neurologists) believed that EMTALA was not intended to apply to an inpatient admitted through the dedicated emergency department. Several commenters cited the recent ruling by the Court of Appeals for the Ninth Circuit in *Bryant* v. *Adventist Health System* (289 F.3d 1162 (9th Cir. 2002)) that EMTALA generally ceases to apply once an individual is admitted for inpatient care; these commenters believed we should adopt the opinion for the national policy.

Response: In attempting to resolve the issue about EMTALA applicability to admitted emergency patients, we were assisted by referring to cases in which the courts have had to address the same issue. In several instances, the courts concluded that a hospital's obligations under EMTALA end at the time that a hospital admits an individual to the facility as an inpatient. *See Bryan* v. *Rectors and Visitors of the University of Virginia*, 95 F.3d 349 (4th Cir. 1996); *Bryant* v. *Adventist Health Systems/West*, 289 F.3d 1162 (9th Cir. 2002); and *Harry* v. *Marchant*, 291 F.3d 767 (11th Cir. 2002). In reaching this result, the courts focused on the definition of "to stabilize" set out in the statute at section 1867(e)(3)(A) of the Act. In this definition, the Congress defined this concept by specifically linking the hospital's obligation to provide stabilizing treatment to individuals presenting with emergency medical conditions to the context in which the services are provided.

In particular, the courts found that the statute requires that stabilizing care must be provided in a way that avoids material deterioration of an individual's medical condition if the individual is being transferred from the facility. The courts gave great weight to the fact that hospitals have a discrete obligation to stabilize the condition of an individual when moving that individual out of the hospital to either another facility or to his or her home as part of the discharge process. Thus, should a hospital determine that it would be better to admit the individual as an inpatient, such a decision would not result in either a transfer or a discharge, and, consequently, the hospital would not have an obligation to stabilize under EMTALA. The courts have generally acknowledged that this limitation on the scope of the stabilization requirement does not protect hospitals from challenges to the decisions they make about patient care; only that redress may lie outside EMTALA. For example, a hospital may face liability for negligent behavior that results in harm to persons it treat after they are admitted as inpatients, but such potential liability would flow from medical malpractice principles, not from the hospital's obligations under EMTALA.

As many courts have ruled, EMTALA does not purport to establish a medical malpractice cause of action nor establish a national standard of care. In our view, apart from the possible malpractice implications redressable outside the statute, hospitals that fail to meet their obligations to provide quality care to inpatients may also face consequences affecting their Medicare certification under the applicable CoPs at 42 CFR Part 482. We discuss these CoPs and the process by which we enforce compliance with these CoPs in greater detail in section XIII. of this preamble. In a January 24, 2003 final rule (68 FR 3435), we explained that if our surveyors discover noncompliance with the hospital CoPs, "the hospital will be scheduled for termination from the Medicare and Medicaid programs." Thus, for hospital CoPs violations, as well as for EMTALA violations (compliance with which is a Medicare participation requirement), hospitals face the extreme sanction of termination from the Medicare program.

As a result of these court cases, and because we believe that existing hospital CoPs provide adequate, and in some cases, superior protection to patients, we are interpreting hospital

obligations under EMTALA as ending once the individuals are admitted to the hospital inpatient care. As an example of a case in which the hospital CoPs provide protection superior to that mandated by EMTALA, the discharge planning CoP in 42 CFR 482.43 includes specific procedural requirements that must be satisfied to show that there has been adequate consideration given to a patient's needs for post-discharge care. EMTALA does not include such specific requirements.

We believe that, as the agency charged with enforcement of EMTALA, it is appropriate to pay deference to the numerous Federal courts of appeal that have decided upon this issue. Although the decisions of the courts in these EMTALA private right of action cases are not necessarily binding for our enforcement purposes, we do believe that consistent judicial interpretation of this matter, when combined with the many comments received on this matter, dictate the policy that we articulate in this final rule.

Moreover, given the numerous hospital CoPs that protect inpatients, as well as patients' rights under State law, we believe that patients are sufficiently protected under our policy as we have articulated it in this final rule. However, a hospital cannot escape liability under EMTALA by ostensibly "admitting" a patient, with no intention of treating the patient, and then inappropriately transferring or discharging the patient without having met the stabilization requirement. If it is discovered upon investigation of a specific situation that a hospital did not admit an individual in good faith with the intention of providing treatment (that is, the hospital used the inpatient admission as a means to avoid EMTALA requirements), then liability under EMTALA may attach.

2. Definition of Stability

Comment: One commenter took issue with our proposed regulatory language on when EMTALA ends for hospital inpatients at § 489.24(d)(2)(ii), which states:

"If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, stabilizes that individual's emergency medical condition, and this period of stability is documented by relevant clinical data in the individual's medical record, the hospital has satisfied its special responsibilities under this section with respect to that individual. If the patient is stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions, the hospital's special responsibilities under this section are satisfied * * *."

The commenter believed the proposed standard, "stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions," could undermine both patient safety and the EMTALA statute if hospitals only document that a patient is as stable as similarly situated patients for an appropriate transfer. The commenter requested that the final rule specify that the hospital may satisfy its EMTALA obligations to an admitted patient only by documenting that it has provided stabilizing treatment to the point that the emergency medical condition has been resolved.

Response: As stated earlier in this section of the preamble, in this final rule we have decided not to interpret EMTALA as requiring hospitals to continue to provide stabilizing treatment (as that term is understood under EMTALA) to individuals once the individuals are admitted in good faith to the hospital for inpatient care. Therefore, the above comment on documenting stability for inpatients is no longer an issue that we need to address in the inpatient setting. However, as we have also stated above, a hospital that admits patients but do not so do in good faith may face consequences under both EMTALA and the applicable Medicare CoPs.

Comment: Many commenters asked for clarification of when, how, and if EMTALA applies to transfers from the inpatient care setting (when the individual has not yet been stabilized) to another acute care hospital. In addition, many commenters asked for clarification of the issue of "stability" in the inpatient setting. On the one hand, the commenters stated, we have stated that if the admitted emergency patient could have been transferred as "stable" under the statute, the hospital has satisfied its EMTALA obligation by meeting the statutory requirement of providing stabilizing treatment to the point of stability for transfer, and the hospital's obligation under EMTALA ends (67 FR 31476). However, some commenters pointed out that the statute appears to support a "stable for discharge" standard to end the EMTALA obligation.

Another commenter recommended that we clarify that a hospital inpatient may be stable for transfer or stable for discharge for purposes of EMTALA.

One commenter stated that because of possible confusion on the part of the emergency department staff of what constitutes "stable" under the EMTALA regulations in the inpatient setting, many patients may be identified as stable who are technically medically unstable. The commenter recommended that CMS clarify who the reasonable parties are, to determine whether a patient is stable and can be transported to provide the best outcome for that patient.

Another commenter requested that CMS clarify that once an inpatient has been stabilized for discharge, EMTALA no longer applies, even if the patient requires followup care. The commenter requested guidance on whether, for example, the fact that a patient who is being discharged will eventually need to receive a cast or risk further injury influences the point of stabilization for EMTALA purposes.

One commenter recommended that CMS clarify the EMTALA followup care requirements, for "stable for discharge," until the individual's emergency medical condition is resolved. The commenter suggested that the hospital merely be required to present the individual with a plan for followup care, listing, for example, names of physicians who are qualified to provide the individual's care or who are on the individual's health care plan.

Response: As noted earlier, we are clarifying in this final rule that EMTALA does not apply to individuals who have been admitted in good faith to inpatient sections of the hospital, regardless of whether the individuals are experiencing emergency medical conditions. Therefore, transfer and stability issues for that individual, once he or she is admitted, would be governed by the Medicare hospital CoPs, State law, and professional considerations, not EMTALA requirements. Regarding the situation of an outpatient who is being released from the hospital but is expected to need followup care at a later time, we note that the EMTALA definition of "to stabilize" requires only that such medical treatment of the condition be provided as may be necessary to assure, within reasonable medical probability, that no material deterioration of the individual's condition is likely to result from the transfer (including discharge) of the individual from the facility. Thus, a hospital clearly may stabilize an individual, thereby satisfying its EMTALA obligation to that individual, even though followup care may be needed.

Comment: One commenter asked us to clarify the preamble language at 67 FR 31475 that discusses the provision that a hospital inpatient admitted with an unstabilized emergency medical condition who goes in and out of apparent stability with sufficient rapidity or frequency would not be

considered "stabilized" within the meaning of § 489.24. The commenter requested clarification of the term "medically stable'; that is, whether "stable" in this context refers to the medical definition of "stable."

Response: Again, because we are clarifying in this final rule that, except in limited circumstances, EMTALA does not apply to hospital inpatients, the comment above on stability as an inpatient is not relevant for purposes of EMTALA.

Comment: Several commenters asked us to clarify that EMTALA would not apply to inpatients who are stable but who are scheduled for inpatient surgery for an emergency medical condition, such as patients who need an angiogram or bypass surgery, after seeing their physician for chest pain. One commenter requested clarification on the issue of individuals directly admitted to the hospital for an emergency medical condition, for example, appendicitis, although the individual is not seeking emergency services from the hospital.

Response: As we have clarified above, once an individual has been admitted as an inpatient (including individuals who have been directly admitted as inpatients upon presentation to the hospital), EMTALA no longer applies, except in the limited circumstances discussed above concerning admissions not made in good faith.

3. Logs on EMTALA Patients

Comment: One commenter who supported our proposed policy on the applicability of EMTALA to admitted emergency patients asked whether the hospital inpatient departments would be required to post signs specifying the EMTALA rights of patients and keep a log of patients who are still covered by EMTALA. The commenter also asked whether the inpatient departments would be required to have EMTALA policy and procedure manuals.

Response: Because we have decided in this final rule that EMTALA does not apply to individuals who are admitted as inpatients in good faith, the comment above concerning the posting of signs, maintenance of logs on inpatients covered by EMTALA, and policies and procedures for EMTALA purposes as described by the commenter will not be required.

4. Other Issues

Comment: One commenter believed that the CMS proposed approach of EMTALA nonapplicability to admitted elective inpatients is inappropriate. The commenter gave several reasons for this belief: Every court in the United States that has considered the issue of hospital obligation has concluded that EMTALA application commenced when the hospital or its agents "became aware" that the individual had an emergency medical condition or was unstable as provided by the law; the U.S. Supreme Court case in *Roberts* v. *Galen of Virginia*, 525 U.S. 249 (1999) specifically stated that the obligations to stabilize, provide additional care or provide an appropriate transfer, or both, are completely unrelated to whether or not the patient came to the emergency department under section 1867(a) of the Act; and *Lopez-Soto* v. *Hawayek*, 175 F.3d 170 (1st Cir. 1999), interpreted the *Roberts* case and addressed and rejected the arguments made by CMS in support of the CMS interpretation of the law and held that once the patient was in the hospital, EMTALA attached when the hospital or doctor knew of the unstable condition.

Response: We disagree with the commenter. After reviewing the EMTALA statute and its legislative history, we find no indication that Congress intended EMTALA to apply to hospital inpatients. To the contrary, the legislative history makes several references to individuals who were denied emergency medical care at hospital emergency rooms, but we find no references to similar problems faced by hospital inpatients. (See H.R. Rept. No. 99–241 (I), at 27 (1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.) Therefore, we believe that Congress intended for EMTALA to address the issue of inadequate emergency care for individuals who presented with emergency medical conditions seeking such care from hospital emergency departments. Moreover, while we are not bound by judicial precedent in cases in which we were not a party, we are familiar with the *Roberts* v. *Galen*, 525 U.S. 249 (199), and *Lopez-Soto* v. *Hawayek*, 175 F.3d 170 (1st Cir. 1999) cases and believe that they do not pose any barrier to the position we are taking in this rule.

In *Roberts*, the Court addressed the issue of whether an individual must prove that a hospital acted with an improper motive in failing to stabilize that individual and concluded that the stabilization provision found in the Social Security Act at section 1867(b)(1) contained no such requirement. The Court did not address the issue of when a hospital's EMTALA obligation to stabilize an individual ends. However, the *Lopez-Soto* case did address the stabilization issue, and in that case the court concluded that a hospital has an obligation to stabilize an individual with an emergency medical condition before arranging a transfer of that person to another facility, regardless of whether the individual presented to the emergency department with the emergency medical condition or elsewhere at the hospital.

Because the court in *Lopez-Soto* was not clear about the inpatient status of the individual, a baby, it is not clear to us whether this decision is necessarily inconsistent with the view of the statute we are taking in this final rule. For example, if the baby in *Lopez-Soto* was not an inpatient at the time it presented with an emergency medical condition, then we would agree that the hospital, under this final rule, would be obligated to respond to the baby's condition as if it had been initially presented to the hospital's emergency department. On the other hand, if the baby were, in fact, an inpatient at the time the emergency first presented itself to hospital staff, the court's holding would be inconsistent with the views adopted in this final rule, and, to this extent, we would disagree with the court's conclusion. As we have explained elsewhere in this preamble, we believe such a conclusion oversteps the requirement of the statute that limits its scope to individuals who have presented themselves to a hospital *prior* to the time they become an inpatient of that facility. However, this is not to say that hospitals are without patient obligations in these cases. Hospitals clearly owe a duty to inpatients, but those obligations derive from the Medicare hospital CoPs at section 1861(e) of the Act and the implementing regulations at 42 CFR Part 482, not from EMTALA. In addition, as we have stated, if it is discovered upon investigation of a specific situation that a hospital did not admit an individual in good faith with the intention of providing treatment, but instead used the inpatient admission merely as a means to avoid EMTALA requirements, then liability under EMTALA may attach.

Comment: One commenter who did not support our proposed policy on the nonapplicability of EMTALA to admitted elective patients requested that we clarify the EMTALA obligations to such individuals who experience an emergency after being admitted to the hospital. Specifically, the commenter was concerned about the transfer of such an unstable individual to a hospital that has special capabilities to treat the individual.

Response: Since EMTALA is not triggered for admitted elective patients who experience an emergency during the inpatient admission, (except in limited circumstances), the EMTALA transfer requirements would not apply

to the transfer of such an individual to another hospital.

Comment: One commenter stated that our language in the preamble that discusses the applicability of EMTALA to "admitted emergency patients" (67 FR 31476) appears to apply only to patients admitted via the emergency department, whereas the language in the proposed regulatory text at § 489.24(d)(2)(ii) states that EMTALA applies to inpatient care "if a hospital admits an individual with unstable emergency medical condition for stabilizing treatment." The commenter requested us to clarify whether EMTALA applies in the inpatient setting but only to an individual admitted via the dedicated emergency department or whether it applies to any individual who has an emergency medical condition.

Response: As stated earlier, our decision in this final rule is that EMTALA no longer applies to any individual who is admitted as an inpatient (except in limited circumstances of circumvention.)

Comment: One commenter recommended that the definition of "inpatient" for purposes of EMTALA would specifically include patients who have been admitted to the hospital but, due to bed availability, are being "boarded" and physically located in the dedicated emergency department.

Another commenter asked us to clarify whether EMTALA would apply to the stabilization of individuals with emergency medical conditions while awaiting admission in the dedicated emergency department or to an unstable patient who is being "held" or "boarded" in the operating room or angiography suite prior to movement to an inpatient bed.

Response: As we have stated, EMTALA applies to an individual who presents to the hospital with an emergency medical condition. If such a condition is found when the individual is screened, the hospital must provide stabilizing treatment, even if the individual is awaiting admission in the dedicated emergency department. Once the individual has been stabilized, the EMTALA obligations end.

In response to the issue about the definition of "inpatient" for purposes of EMTALA, we are revising our proposed definition of "patient" under § 489.24(b) that specified that an inpatient is one who is "receiving inpatient hospital services as defined in § 409.10(b)." Upon further consideration, we believe it would be more helpful to adopt the definition of "inpatient" from Section 210 of the Medicare Hospital Manual (CMS Publication Number 10 (1989)), which is a well-utilized definition in the Medicare program for purposes of Medicare payment. Under that section, an "inpatient is a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally a person is considered an inpatient if formally admitted as an inpatient with the expectation that he [or she] will remain at least overnight and occupy a bed even though it later develops that he [or she] can be discharged or transferred to another hospital and does not actually use a hospital bed overnight." We believe adopting such a definition for EMTALA purposes would provide further guidance in determining who is an inpatient.

To respond specifically to the commenter, individuals who are "boarded" and admitted in the dedicated emergency department would be determined to be inpatients for purposes of EMTALA if, generally, they have been admitted by the hospital with the expectation that they will remain at least overnight and occupy beds in the hospital. We believe such an expectation would be documented based on the information in the individual's medical record.

Comment: One commenter compared the proposed regulatory language regarding the application of EMTALA to inpatients in proposed § 489.24(d)(2)(i) to the language in proposed § 489.24(d)(2)(ii). The commenter stated that although paragraph (d)(2)(i) requires the hospital to have *found* the emergency medical condition and have *actual knowledge* that the condition exists, before it can incur a duty to stabilize under EMTALA, paragraph (d)(2)(ii) does not require that the hospital be aware that the individual had an emergency medical condition at the time of admission.

Response: Proposed § 489.24(d)(2) was based on the proposed policy that EMTALA applied to an individual who was admitted as an inpatient. In this final rule, we are revising our policy to state that EMTALA obligations end toward an individual upon inpatient admission, regardless of the stability of the individual (except in limited circumstances of circumvention). Because we are revising the regulation text to reflect this revised policy, the above comment on proposed § 489.24(d)(2) is no longer relevant.

Comment: One commenter suggested that the final rule should clarify the application of the psychiatric specific definitions of "stable for transfer" and "stable for discharge" in the State Operations Manual.

Response: In the 1998 State Operations Manual at Tag A407 on page V–9, we state: "for purposes of transferring a patient from one facility to a second facility for *psychiatric conditions,* the patient is considered to be stable when he/she is protected and prevented from injuring himself/herself or others. For purposes of discharging a patient (other than for the purpose of transfer from one facility to a second facility), for psychiatric conditions, the patient is considered to be stable when he/she is no longer considered to be a threat to him/herself or to others." However, we note that, generally, psychiatric patients with emergency medical conditions are treated no differently for purposes of EMTALA than any other individual who presents to the hospital with an emergency medical condition. We intend to address the issue of treatment of individuals with psychiatric conditions for purposes of EMTALA in future operating instructions for our State surveyors.

Comment: The commenter also suggested that the final rule clarify that any retrospective review of a physician's determination that an individual is stable will only be based upon the information and clinical data readily available at the time of such determination.

Response: We will keep in mind the commenter's suggestion about retrospective review when we develop future operating instructions for our State surveyors. In addition, the commenter has stated our current position as specified in the 1998 State Operations Manual, page V–9: "the purpose of the professional medical review (physician review) is to provide peer review using information available to the hospital at the time the alleged violation took place."

Comment: One commenter asked for clarification on the point of whether EMTALA should apply when an ambulance delivers an individual through the dedicated emergency department as a direct admit.

Response: As we have clarified above, whenever there is a direct admission of a particular individual as an inpatient, EMTALA no longer applies.

C. Provisions of the Final Rule

In this final rule, we are adopting as final the proposed definition of "patient" under § 489.24(b) with modifications. We are further clarifying what "outpatients" are not subject to the EMTALA obligations.

We also are providing that a hospital's obligations under EMTALA end once an individual is admitted for inpatient care. As explained above, we believe

that this is the appropriate policy because existing hospital CoPs provide adequate, and in some cases, superior protection to inpatients. (*See* section XIII. of this preamble for a detailed discussion of regarding the hospital CoPs). In addition, numerous courts have held that EMTALA obligations end upon inpatient admission. At least two courts ruled on the identical issue after we published our May 9, 2002 proposed rule.

We also are adding language to adopt our established definition of "inpatient" in section 210 of the Medicare Hospital Manual (CMS Publication No. 10) who are also not subject to the EMTALA obligations. In addition, we are adopting as final the proposed § 489.24(d)(2) with modifications. We are clarifying that a hospital is required to provide care to its inpatients in accordance with the Medicare hospital CoPs.

X. Applicability of EMTALA to Provider-Based Entities (§§ 413.65(g)(1), 482.12(f), 489.24(b), and 489.24(i))

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). The regulations in that final rule were subsequently revised to incorporate changes mandated by section 404 of Public Law 106–554 (66 FR 59856, November 30, 2001). However. those revisions did not substantively affect hospitals' EMTALA obligations with respect to off-campus departments.

A. Applicability of EMTALA to Off-Campus Hospital Departments (§§ 489.24(b) and (i) and § 413.65(g)(1))

1. Background

In the April 7, 2000 final rule (65 FR 18504), we clarified the applicability of EMTALA to hospital departments not located on the main provider campus. At that time, we revised § 489.24 to include a new paragraph (i) to specify the antidumping obligations of hospitals with respect to individuals who come to off-campus hospital departments for the examination or treatment of a potential emergency medical condition. As explained in the preamble to the April 7, 2000 final rule, we made this change because we believed it was consistent with the intent of section 1867 of the Act to protect individuals who present on hospital property (including off-campus hospital property) for emergency medical treatment. Since publication of the April 7, 2000 final rule, it has become clear that many hospitals and physicians continue to have significant concerns with our policy on the applicability of EMTALA to these off-campus locations.

2. Provisions of the Proposed Rule

After further consideration, in the May 9, 2002 proposed rule (67 FR 31476), we proposed to clarify the scope of EMTALA's applicability in this scenario to those off-campus departments that are treated by Medicare under § 413.65(b) to be departments of the hospital, and that are equipped and staffed areas that are used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions. That is, we proposed to narrow the applicability of EMTALA to only those off-campus departments that are "dedicated emergency departments" as defined in proposed revised § 489.24(b).

As proposed, this definition would include such departments, whether or not the words "emergency room" or "emergency department" were used by the hospital to identify the departments. The definition would also be interpreted to encompass those off-campus hospital departments that would be perceived by an individual as appropriate places to go for emergency care. Therefore, we proposed to revise the definition of "Hospital with an emergency department" at § 489.24(b) to account for these off-campus dedicated emergency departments and also to amend the definition of "Comes to the emergency department" at § 489.24(b) to include this same language. We believe these proposed changes would enhance the quality of emergency care by facilitating the prompt delivery of emergency care in those cases, thus permitting individuals to be referred to nearby facilities with the capacity to offer appropriate emergency care.

In general, we expect that off-campus departments that meet the proposed definitions stated above would in practice be functioning as "off-campus emergency departments." Therefore, we believe it is reasonable to expect the hospital to assume, with respect to these off-campus departments, all EMTALA obligations that the hospital must assume with respect to the main hospital campus emergency department. For instance, the screening and stabilization or transfer requirements described in section V.K.1. of the preamble of the May 9, 2002 proposed rule ("Background") would extend to the off-campus emergency departments, as well as to any such departments on the main hospital campus.

In conjunction with this proposed change in the extent of EMTALA applicability with respect to off-campus facilities, we also proposed to delete all of existing § 489.24(i), which, as noted above, was established in the April 7, 2000 final rule. We proposed to delete this paragraph in its entirety because its primary purpose is to describe a hospital's EMTALA obligations with respect to patients presenting to off-campus departments that do not routinely provide emergency care. Under the proposals outlined above, however, a hospital would have no EMTALA obligation with respect to individuals presenting to such departments. Therefore, it would no longer be necessary to impose the requirements in existing § 489.24(i). Even though off-campus provider-based departments that do not routinely offer services for emergency medical conditions would not be subject to EMTALA, some individuals may occasionally come to them to seek emergency care. Under such circumstances, we believe it would be appropriate for the department to call an emergency medical service (EMS) if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. Consistent with the hospital's obligation to the community and similar to the Medicare hospital CoP under § 482.12(f)(2) that apply to hospitals that do not provide emergency services, we would expect the hospital to have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care.

To clarify a hospital's responsibility in this regard, in the May 9, 2002 proposed rule, we proposed to revise § 482.12(f) by adding a new paragraph (3) to state that if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff of the hospital has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate. (We note that, in a separate document (62 FR 66758, December 16, 1997), we proposed to relocate the existing § 482.12(f) requirement to a new section of Part 482. The change to § 482.12(f) in this final rule will be taken into account in finalizing the December 16, 1997 proposal.) However, the hospital would not incur an EMTALA obligation with respect to the individual.

In summary, we proposed in existing § 489.24(b) to revise the definitions of "comes to the emergency department" and "hospital with an emergency

department", and to include these off-campus departments in our new definition of "dedicated emergency department." We solicited comments on whether this new term is needed or if the term "emergency department" could be defined more broadly to encompass other departments that provide urgent or emergent care services. We proposed to delete all of existing § 489.24(i) and to make conforming revisions to § 413.65(g)(1).

3. Summary of Public Comments and Departmental Responses

Comment: Numerous commenters expressed strong support for the proposal to limit the applicability of EMTALA, in cases of off-campus departments, to only those departments that qualify as dedicated emergency departments. Some commenters stated that EMTALA should not apply to an off-campus department that does not hold itself out as an emergency department. Other commenters believed this would be appropriate because a prudent layperson would not regard the department as an appropriate place at which to seek emergency care. These commenters stated that an individual with a broken arm might regard the hospital's orthopedic department as an appropriate source of care, but that this should not mean that the orthopedic department should be treated as a dedicated emergency department.

Other commenters stated that EMTALA should not apply to any off-campus department unless CMS provides a narrower definition of "dedicated emergency department" and clarifies whether or under what circumstances EMTALA will apply to urgent care facilities. However, the commenters did not provide any indication of why the definition is believed to be too broad or how they would recommend changing it.

Several commenters stated that EMTALA should not apply to an off-campus urgent care center unless the center is functioning and holding itself out to the public as an emergency department.

Response: We agree that EMTALA should apply to off-campus departments only if they qualify as dedicated emergency departments, and have addressed the commenters' suggestion as part of the revision of the definition of a dedicated emergency department. In addition, we are adopting in this final rule the proposed standard under § 482.12(f)(3) that hospitals have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care.

Regarding the suggestion that a hospital's orthopedic department might be determined to be a dedicated emergency department because an individual person would look to it for emergency orthopedic care, as we have noted above, the definition of "dedicated emergency department" in section VIII. of this preamble does not include "prudent layperson" standard. Rather, with this final rule, "dedicated emergency department" means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that (1) is licensed by the State in which it is located under applicable State law as an emergency room or emergency department; (2) is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or (3) during the calendar year immediately preceding the calendar year in which a determination under § 489.24 is being made, based on a representative sample of patient visits that occurred during that calendar year, provides at least one-third of all of its outpatient visits for the examination or treatment of emergency medical conditions. If the orthopedic department does not meet any of these three criteria for dedicated emergency department status, it is not a dedicated emergency department for EMTALA purposes, regardless of what the individual may believe as to the status of the department.

4. Provisions of the Final Rule

We are adopting, as final with modifications as discussed in earlier sections of this preamble, the proposed revisions of the definition of "come to the emergency department," "hospital with an emergency department," and "dedicated emergency department" at § 489.24(b), which encompass off-campus hospital departments that would be perceived by individuals as appropriate places to go for emergency care. We also are adopting as final the related proposed deletion of the provisions under § 489.24(i) and the conforming change to § 413.65(g)(1). In addition, we are adopting, as final, the proposed new § 482.12(f)(3) which provides that the governing body of a hospital must assure that the medical staff has written policies and procedures in effect with respect to off-campus departments for appraisal of emergencies and referrals, when appropriate.

B. On-Campus Provider-Based Applicability

1. Background

At existing § 413.65(g)(1), we state, in part, that if any individual comes to any hospital-based entity (including an RHC) located on the main hospital campus, and a request is made on the individual's behalf for examination or treatment of a medical condition, the entity must comply with the antidumping rules at § 489.24. Since provider-based entities, as defined in § 413.65(b), are not under the certification and provider number of the main provider hospital, this language, read literally, would appear to impose EMTALA obligations on providers other than hospitals, a result that would not be consistent with section 1867, which restricts EMTALA applicability to hospitals.

2. Provisions of the Proposed Rule

To avoid confusion on this point and to prevent any inadvertent extension of EMTALA requirements outside the hospital setting, in the May 9, 2002 proposed rule (67 FR 31477), we proposed to clarify that EMTALA applies in this scenario to only those *departments* on the hospital's main campus that are provider-based; EMTALA would not apply to provider-based *entities* (such as RHCs) that are on the hospital campus.

In addition, we proposed in § 489.24(b) to revise the definition of "Comes to the emergency department" to include an individual who presents on hospital property, in which "hospital property" is, in part, defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that may be located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." We specifically sought comments on this proposed revised definition. Generally, the proposed language would clarify that EMTALA does not apply to provider-based entities, whether or not they are located on a hospital campus. This language is also consistent with our policy as stated in questions and answers published on the CMS Web site: *http://www.cms.gov* (CMS EMTALA guidance, 7/20/01, Q/A #1) that clarifies that EMTALA does not apply to other areas or structures located on the hospital campus that are not part of the hospital, such as fast food

restaurants or independent medical practices.

We stated that if this proposed change limiting EMTALA applicability to only those on-campus departments of the hospital became final, we believe that if an individual comes to an on-campus provider-based entity or other area or structure on the campus not applicable under the new policy and presents for emergency care, it would be appropriate for the entity to call the emergency medical service if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of emergency medical service personnel. However, the hospital on whose campus the entity is located would not incur an EMTALA obligation with respect to the individual.

In the May 9, 2002 proposed rule, we solicited comments from providers and other interested parties on the proper or best way to organize hospital resources to react to situations on campus where an individual requires immediate medical attention.

We proposed in § 489.24(b) to revise the definition of "Comes to emergency department" (specifically, under proposed new paragraph (1)) and make conforming changes at § 413.65(g)(1).

In the August 1, 2002 final rule issued following the May 9, 2002 proposed rule (67 FR 50090), we only adopted as final the deletion of the second sentence of the existing § 413.65(g)(1) that address the nonapplicability of EMTALA to provider-based entities. We did not adopt other proposed clarifications concerning application of EMTALA to provider-based departments, on or off the campus, or any other proposals concerning EMTALA.

3. Summary of Public Comments and Departmental Responses

Comment: Several commenters expressed general approval of the proposed clarifications of the definition of "hospital property" for purposes of the EMTALA regulations and stated that the proposals will lead to more precise interpretation of the regulations.

Response: We agree, and are adopting the proposed clarifications as part of this final rule.

Comment: One commenter expressed strong opposition to the proposed clarification under which on-campus provider-based entities would not be subject to EMTALA. The commenter noted that individuals seeking emergency treatment may be severely confused or agitated, so that they would be unable to determine whether a particular area or facility is a dedicated emergency department, and that in some cases such individuals may also be physically unable to proceed to the dedicated emergency department. The commenter also stated that provider-based departments frequently are located close to the main hospital campus, typically receive higher reimbursement from Medicare by virtue of their provider-based status, and may be indistinguishable, especially to an individual in a crisis situation, from areas at which emergency care is provided. The commenter suggested that, in view of this, it is not unreasonable to expect the provider-based entity to assume responsibility for ensuring that individuals who present with emergency care needs receive screening and stabilization. Therefore, the commenter recommended that we require that provider-based entities either ensure that transfer to a dedicated emergency department occurs safely, or provide screening and stabilization at the entity if it is able safely to do so.

Response: We understand and share the commenter's concern for individuals seeking emergency services who come to provider-based entities for assistance, but note that the legislative provision under which EMTALA responsibilities apply (section 1867 of the Act) is specific to hospitals, and does not extend to nonhospital entities (such as rural health clinics or physician offices), even where those entities may be located adjacent to hospital facilities and owned or operated by hospitals, or both. Therefore, we are not making a revision in this final rule based on this comment.

4. Provisions of the Final Rule

We are adopting, as final with minor editorial changes as explained earlier in this preamble, the proposed revision of "come to the emergency department" and "hospital property" in which hospital property is, in part, defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." This will clarify that on-campus provider-based entities would not be subject to EMTALA.

We are also adopting as final without modification the proposed clarifying change to § 413.65(g)(l).

XI. EMTALA and On-Call Requirements (§ 489.24(j))

A. Background

We have frequently received inquiries concerning the statutory requirement that hospitals maintain an "on-call" list of physicians to provide services to patients who seek care in hospital emergency departments. We believe there are a number of misconceptions in the provider industry concerning these on-call requirements. Therefore, as in the May 9, 2002 proposed rule (67 FR 31478), we are including a section that clarifies what kinds of obligations physicians and hospitals have to provide on-call coverage under EMTALA.

Section 1866(a)(1)(I)(iii) of the Act states, as a requirement for participation in the Medicare program, that hospitals must maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. If a physician on the list is called by a hospital to provide emergency screening or treatment and either fails or refuses to appear within a reasonable period of time, the hospital and that physician may be in violation of EMTALA as provided for under section 1867(d)(1)(C) of the Act.

The CMS State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V–15, Tag A404) states:

- Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients.
- Physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

Thus, hospitals are required to maintain a list of physicians on call at any one time, and physicians or hospitals, or both, may be responsible under the EMTALA statute to provide emergency care if a physician who is on the on-call list fails to or refuses to appear within a reasonable period of time. However, Medicare does not set requirements on how frequently a hospital's staff of on-call physicians are expected to be available to provide on-call coverage; that is a determination to be made between the hospital and the physicians on its on-call roster. We are aware that practice demands in treating other patients, conferences, vacations,

days off, and other similar factors must be considered in determining the availability of staff. We also are aware that some hospitals, particularly those in rural areas, have stated that they incur relatively high costs of compensating physician groups for providing on-call coverage to their emergency departments, and that doing so can strain their already limited financial resources. CMS allows hospitals flexibility to comply with EMTALA obligations by maintaining a level of on-call coverage that is within their capability.

We understand that some hospitals exempt senior medical staff physicians from being on call. This exemption is typically written into the hospital's medical staff bylaws or the hospital's rules and regulations, and recognizes a physician's active years of service (for example, 20 or more years) or age (for example, 60 years of age or older), or a combination of both. We wish to clarify that providing such exemptions to members of hospitals' medical staff does not necessarily violate EMTALA. On the contrary, we believe that a hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients as long as the exemption does not affect patient care adversely. Thus, CMS allows hospitals flexibility in the utilization of their emergency personnel.

We also note that there is no predetermined "ratio" that CMS uses to identify how many days a hospital must provide medical staff on-call coverage based on the number of physicians on staff for that particular specialty. In particular, CMS has no rule stating that whenever there are at least three physicians in a specialty, the hospital must provide 24 hour/7 day coverage in that specialty. Generally, in determining EMTALA compliance, CMS will consider all relevant factors, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

B. Provisions of the Proposed Rule

To clarify our policies on EMTALA requirements regarding the availability of on-call physicians, in the May 9, 2002 proposed rule, we proposed to add to § 489.24 a new paragraph (j) to specify that each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients. This proposed paragraph further specified that physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times, and that the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

C. Summary of Public Comments and Departmental Responses

1. General Comments

Comment: Numerous commenters expressed strong support for the proposal to clarify in regulations that physicians are not required to be on call at all times and that a hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients.

Response: We appreciate these commenters' support and have kept their views in mind in evaluating the other comments recommending specific changes in the proposed rule for this final rule.

2. Minimal Interpretation of On-Call Responsibility

Comment: One commenter recommended that the requirement for an explicit list of on-call physicians be eliminated because, in the opinion of the commenter, physicians may be less willing to agree to be on call if they are required to commit in advance to be available at specific times. Numerous commenters did not request elimination of the requirement but stated that the requirement should be interpreted narrowly, as meaning only that the list of physicians willing to be on call is to be maintained and available in the emergency department, and that on-call services of those physicians must be available to each patient regardless of ability to pay. The commenters asked that the regulations be revised to specify that the on-call requirement does not require hospitals to maintain any particular level of on-call coverage, since hospitals are not legally authorized or practically empowered to control physician availability for on-call coverage.

Response: We cannot eliminate the requirement for an on-call list from the regulations, as that requirement is mandated by section 1866(a)(1)(I)(iii) of the Act. While we understand the rationale for interpreting section 1866 of the Act as imposing only a minimal on-call requirement, we also note that on-call physician services, like other services for the examination and treatment of emergency medical conditions, must be made available within the capability of the hospital, under sections 1867(a) and (b) of the Act. Therefore, we are not adopting these commenters' recommendations.

Comment: Some commenters expressed concern that the proposed changes allowing hospitals and physicians more flexibility to set on-call policies might actually increase overcrowding in hospital emergency departments. The commenters stated that patients who require specialty physician care often must wait in the emergency department for extended periods, since the physician's presence is needed to authorize either admission or an appropriate transfer.

One commenter suggested that adoption of the more flexible regulations on on-call responsibility would only exacerbate this problem. To prevent that, the commenter recommended that a hospital that is unable to maintain full-time specialty coverage in one or more areas be required to have a transfer agreement with a hospital that has that level of coverage and will accept all patients in that specialty or subspecialty area. The commenter also recommended that we prescribe a maximum time for which patients could be required to wait in the emergency department for specialty care and that provision be made for patients who must be held beyond that time to be admitted either to an inpatient bed or to an outpatient holding area outside the emergency department, to await the arrival of a specialist. The commenter noted that this placement would not end the hospital's EMTALA obligation, but would free emergency department resources to permit more emergency patients to be treated.

Response: We agree that it is appropriate for hospitals to have referral agreements with other hospitals to facilitate appropriate transfers of patients who require specialty physician care that is not available within a reasonable period of time at the hospital to which the patient is first presented. Hospitals that cannot maintain full-time on-call coverage in specific medical specialties should also keep local EMS staff advised of the times during which certain specialties will not be available, thereby minimizing the number of cases in which individuals must be transferred due to lack of complete on-call coverage. However, we are not mandating the maintenance of such agreements in this final rule. Even though such agreements may be desirable, we recognize that hospitals may be unable, despite their best efforts, to secure such advance agreements from specialty hospitals. (We note that, even in the absence of an advance agreement,

a participating hospital with specialized capabilities or facilities that has the capacity to treat an individual but refuses to accept an appropriate transfer would thereby violate the EMTALA requirement on nondiscrimination (section 1867(g) of the Act) and could be liable for termination of its provider agreement or civil money penalties, or both.)

We also agree that it would be appropriate for hospitals to limit individuals' waiting time in the emergency department, and to either admit the individual as an inpatient or move him or her to another appropriate outpatient area for treatment in cases where the arrival of a specialist is unavoidably delayed. However, given the heavy demand on emergency department resources and the variations in numbers of patients needing emergency care, we do not believe it is feasible to mandate uniform national limits on how long patients may be held in emergency departments.

3. Recommended Definition of "Best Meets the Needs of the Hospital's Patients"

Comment: Some commenters recommended that the requirement to maintain an on-call list that best meets the needs of the hospital's patients be revised to specifically recognize potential limits on on-call physician availability, by stating that the list must best meet the needs of patients in accordance with the resources available to the hospital, including the availability of on-call physicians. Another commenter recommended that the regulation be revised to mandate maintenance of an on-call list that meets patient needs to the extent permitted by the physician resources available to the hospital through its organized medical staff. Still another commenter recommended that the list be one that best meets the needs of the hospital's patients in accordance with the resources available to the hospital. Another commenter stated that the language as proposed does not clarify whether the on-call coverage must be determined by the needs of the hospital's inpatients or its outpatients, and suggested that the regulation be clarified to state that the on-call list be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA.

Response: After consideration of these comments, we agree that the regulations should be further revised to explicitly acknowledge the limits on availability of on-call staff in many specialties and geographic areas. Therefore, we are revising proposed § 489.24(j) in this final rule to state that the list must be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA in accordance with the capability of the hospital, including the availability of on-call physicians.

Comment: One commenter recommended that the regulations be revised to state that hospitals are not required to provide on-call physician coverage in specialties not available to the hospital's inpatients. Some commenters also stated that, at a minimum, CMS should require that if a hospital offers a service to the public, the service must be available through on-call coverage at the emergency department. For example, one commenter stated that some hospitals have departments of neurology and may have as many as 10 to 20 board-certified neurologists on its medical staff, but do not offer on-call services of neurologists to emergency patients. This commenter believed further specificity as to on-call obligations would avoid this problem.

Response: We agree that a hospital would not be required to maintain on-call physician coverage for types of services it does not routinely offer, but there are many reasons why a hospital would not have physician specialty care available on an on-call basis, even if such specialty care is above the range of specialty care available to inpatients. Therefore, we are not adopting this comment in this final rule.

Regarding the recommendation that a hospital be required to provide on-call coverage in any specialty offered to the hospital's patients, we agree that this would be a reasonable expectation and note that interpretative guidelines for EMTALA in the Medicare State Operations Manual (CMS Publication No. 7), page V–15, state that if a hospital offers a service to the public, the service should be available through on-call coverage of the emergency department. However, we are concerned that if this expectation were adopted as a requirement for all hospitals with emergency departments as part of this final rule, it might establish an unrealistically high standard that not all hospitals could meet. Therefore, we are not adopting this comment in this final rule.

Comment: One commenter recommended that the regulations be revised to clarify how CMS will deal with situations in which two hospitals with similar numbers of physicians on staff provide widely varying levels of on-call coverage. For example, one hospital with 3 neurosurgeons on staff might be able to provide "24/7" coverage, while another hospital with 3 neurosurgeons on staff might provide coverage only 10 days per month.

Response: We agree that a situation of the type described by the commenter could raise questions regarding the second hospital's commitment to obtaining on-call coverage, but note that many factors, including the overall supply of specialty physicians in an area, the extent to which hospitals offer specialty care through the use of "itinerant" physicians from other areas, and the availability of specialty care at other nearby hospitals, might all influence the hospital's decisions regarding the level of on-call coverage it can reasonably expect to provide. Because we are concerned that establishing overly prescriptive standards might impose an unrealistically high burden for some hospitals, we are not adopting any further regulatory requirements for handling situations in which hospitals' levels of on-call coverage vary significantly. We will continue to investigate such situations in response to complaints and will take appropriate action if the level of on-call coverage is unacceptably low.

4. Physicians' Responsibility for On-Call Coverage

Comment: Some commenters suggested that the proposal to allow hospitals greater flexibility to maintain on-call coverage that best meets the needs of their patients may be more restrictive than necessary to prevent discrimination or may have the unintended effect of reducing access to on-call services. These commenters argued for a more precise description of how patient needs can best be met, or for elimination of the "best meets the needs" clause. Some commenters stated that by allowing a hospital flexibility and declining to adopt any specific standards as to when a hospital may or may not be required to provide on-call coverage, CMS may be placing the EMTALA on-call burden on hospitals with no corresponding responsibility on the part of physicians, whose participation is necessary for the hospital to meet its obligation.

Some commenters recommended that the regulations be further revised to more specifically address the responsibilities of physicians to make themselves available when on call, the accountability of physicians for EMTALA compliance, and the acceptability of transferring patients when specialty physicians are not available. Other commenters recommended that more specific rules

be adopted regarding the times at which physicians are expected to be on call.

Another commenter cited a study by the University of California at Los Angeles titled "A Day in the Life of a California Emergency Department: Waiting Times and Resources, Trends in Use and Capacity, and Perceptions of Emergency Professionals." The commenter stated that the study finding indicated that, during the study period (December 2000 through May 2001), a significant number of on-call physicians either did not respond to call at all or responded only after a delay of at least 20 minutes, and that many took longer than 35 minutes to arrive. The commenter stated that the study documents the refusal of many on-call physicians to fulfill their on-call responsibilities and argued that hospitals should not be held responsible in such cases.

Another commenter also believed the proposed rules unfairly burden hospitals with the responsibility for maintaining on-call coverage but do not provide any guidance on a medical staff member's obligation to participate in on-call panels. The commenter expressed concern that the proposed language would, if adopted, allow physicians to either refuse to be on call, shift their practices to facilities not requiring on-call service, or demand exorbitant payment for on-call service. To avoid these effects, the commenter recommended that CMS either furnish additional detailed guidance on how hospitals can obtain on-call coverage when physicians refuse to provide it, or mandate that participation on on-call panels at hospitals subject to EMTALA is required as a condition of being a Medicare-participating physician.

Response: We understand the commenters' concern, but do not believe it would be practical or equitable to attempt to adopt more prescriptive rules on such matters as the number of hours per week physicians must be on call or the numbers of physicians needed to fulfill on-call responsibilities at particular hospitals. We believe these are local decisions that can be made reasonably only at the individual hospital level through coordination between the hospitals and their staffs of physicians.

Regarding situations in which physicians may irresponsibly refuse to fulfill the on-call responsibilities they have agreed to accept, we note that current law (section 1867(d)(1)(B) of the Act) provides penalties for physicians who negligently violate a requirement of section 1867 of the Act, including on-call physicians who refuse to appear when called. We further note that physicians who practice in hospitals do so under privileges extended to them by those hospitals, and that hospitals facing a refusal by physicians to assume on-call responsibilities or to carry out the responsibilities they have assumed could suspend, curtail, or revoke the offending physician's practice privileges. Moreover, when an EMTALA violation involving on-call coverage is found to have occurred, surveyors and CMS regional office staff will review all facts of the situation carefully to ensure that hospitals that have acted in good faith to ensure on-call coverage are not unfairly penalized for failure by individual physicians to fulfill their obligations.

Therefore, we are not making any change in the final rule based on these comments.

5. Hospital Responsibility for On-Call Coverage

Comment: One commenter stated that when the initial EMTALA legislation was enacted in 1986, emergency physicians were finding it virtually impossible to find specialists willing to come to the emergency department to treat emergency patients, and that the 1988 amendments to the EMTALA statute making it explicit that physicians are covered by on-call requirements have significantly improved the availability of on-call services in hospital emergency departments. Because of this improvement, the commenter stated that CMS should not give credence to allegations that EMTALA is making on-call coverage more difficult to obtain. The commenter further stated that even though the proposed regulatory language is virtually identical to the position CMS has taken in the past regarding on-call responsibilities, in the current climate the language is very likely to be viewed as offering assurances that physicians have no obligation to provide on-call coverage. To avoid this result, which the commenter believed would compromise the quality of patient care and lead to patient deaths, the commenter recommended that CMS clearly state that the proposed regulatory language does not represent a change in policy and that hospitals and physicians that fail to meet their on-call obligations as determined by EMTALA will be cited for noncompliance. The commenter also recommended that a safe harbor be created for EMTALA compliance, but does not describe the specific terms under which the safe harbor should be made available.

Other commenters also expressed concern about diminished access to on-call services as a result of perceptions of the proposals. These commenters stated that, because public hospitals typically are the only hospitals in a community committed to maintaining full-time on-call coverage in many specialties, other hospitals may view flexible requirements in this area as an opportunity to reduce their on-call coverage, thus further unfairly shifting the on-call burden to public hospitals and the physicians who practice in them. The commenters believed CMS should issue guidance stating more specifically how hospitals that maintain less than full-time on-call coverage will be evaluated under EMTALA.

Response: We understand the concerns expressed by the commenters about possible reductions in access to on-call services and wish to emphasize that the proposals are not intended to signal any change in CMS' position regarding hospitals' responsibility to comply with EMTALA. We also understand the desire by some for more specific guidance regarding the level of on-call coverage to be provided and the types of services for which on-call coverage must be available. However, under section 1867(a) of the Act, the EMTALA screening must be provided "within the capability of the hospital's emergency department" and that under section 1867(b) of the Act, further medical screening and stabilizing treatment must be made available only "within the staff and facilities available at the hospital." Given the wide variation in the size, staffing, and capabilities of the institutions that participate in Medicare as hospitals, we do not believe it is feasible for us to mandate any particular minimum level of on-call coverage that must be maintained by all hospitals subject to EMTALA, or to specify that on-call coverage is required for all services offered at the hospital. Therefore, we are not making any changes to our proposal in this final rule based on this comment.

Comment: Several commenters expressed support for the clarification that EMTALA does not require 24/7 on-call coverage at all hospitals, but some of the commenters suggested that the regulations be further strengthened to prohibit hospitals from maintaining such coverage when their capacity does not support it. Another commenter stated that we should not only clarify that EMTALA does not require "24/7" on-call coverage at all hospitals, but should prohibit hospitals from requiring physicians to be on call 24 hours a day, 7 days a week. Another commenter stated that CMS should prohibit hospitals from requiring physicians to be on call at times when they are

already committed to being on call at another hospital. One commenter stated that CMS should at least establish a grievance procedure that would allow physicians to challenge on-call requirements that the physicians believe are unreasonable.

Response: We appreciate the commenters' expression of support for the proposed clarification of our policy in this area, and agree with commenters that EMTALA does not require any physician to be on call at all times. However, we do not believe it would be appropriate for CMS to prescribe levels of on-call coverage; on the contrary, these matters should be worked out between individual hospitals and their medical staff. Therefore, we have not included any provision on the level of on-call coverage hospital may require. Also, we have no statutory authority to mandate the kind of appeals procedure for on-call requirements that was recommended. Therefore, we are not making any change in this final rule based on grievance procedures.

Comment: One commenter suggested that hospitals may be reducing physician staffing in some specialties (below the levels needed to treat all patients, including insured and uninsured patients) and relying on on-call coverage to meet the need to care for indigent patients. The commenter suggested that the regulations be revised to prohibit this practice.

Response: We understand the commenter's concern, but do not believe we can establish realistic objective standards for levels of physician staffing. However, we will keep the comment in mind as we prepare interpretive guidelines and conduct surveyor training, and will review any actual case situations involving understaffing of emergency departments carefully, to determine whether services mandated by EMTALA are, in fact, being provided within the capability of the hospital.

6. Simultaneous Call and Performance of Other Physician Services While on Call

Comment: A number of commenters stated that, because of shortages of physicians in certain specialties (for example, orthopedics or neurosurgery) in some areas, the proposed regulations regarding on-call coverage should be revised to state explicitly that it is not a violation of EMTALA for a physician to be on call simultaneously at two or more hospitals, as long as each hospital has a back-up plan for ensuring that needed care is received from another physician or through an appropriate transfer when the on-call physician is not in fact available. The commenters also recommended that the regulations be revised to clarify that it is not a violation of EMTALA for a physician to schedule and perform elective surgery while he or she is on call, if such a back-up plan is in place at each hospital for which the physician is on call.

Some commenters suggested that the physician's performance of elective surgery that a physician has freely undertaken should be used as an example of a circumstance that is beyond the physician's control. One of these commenters recommended that physicians who have agreed to be on call, but subsequently engage in activities that make it impossible to fulfill their commitment, should be allowed to make alternative arrangements for responding to calls. Another commenter recommended that the regulations be revised to provide specific examples of situations beyond a physician's control.

Still another commenter recommended that proposed paragraph (j) be revised to state that physicians may provide simultaneous call at more than one hospital, provided the number and geographic proximity of the hospitals are such that a single physician can reasonably provide on-call services at each facility. The commenter recommended that further language be added to state that physicians who are on call may schedule office visits or elective surgery without incurring penalties under EMTALA. The commenter believed the policies and procedures of the hospital for responding to situations in which the particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control should be developed in consultation with the hospital's medical staff and that the examples of situations beyond a physician's control should include situations when the physician is already treating another patient. Some commenters stated that a Program Memorandum issued by CMS on June 13, 2002, stated that when a physician is performing surgery while being on call, having another physician available to respond to calls is an acceptable way to fulfill the physician's on-call responsibility but that having the capability to arrange appropriate transfers is also an acceptable form of compliance. The commenters recommended that CMS revise proposed § 489.24(j) to reflect this policy.

Another commenter stated that the regulation should state more specifically what types of back-up plans would be acceptable when a physician has scheduled elective surgery while on call.

Response: We agree that it is important that policy regarding simultaneous call and scheduling of elective surgery while on call be clearly communicated to, and understood by, affected hospitals and physicians. Therefore, on June 13, 2002, we issued Survey and Certification Letter No. S&C–02–35, to clarify that we believe hospitals should continue to have the flexibility to meet their EMTALA obligations by managing on-call physician coverage in a manner that maximizes patient stabilizing treatment as efficiently and effectively as possible. The letter further states that when the on-call physician is simultaneously on-call at more than one hospital in the geographic area, all hospitals involved must be aware of the on-call schedule, as each hospital independently has an EMTALA obligation.

In addition, the letter clarifies that hospitals must have policies and procedures to follow when an on-call physician is simultaneously on call at another hospital and is not available to respond. Hospital policies may include, but are not limited to, procedures for back-up on-call physicians, or the implementation of an appropriate EMTALA transfer according to § 489.24(d). The letter reaffirms CMS' view that hospitals have flexibility in adopting specific policies and procedures to meet their EMTALA obligations, so long as they meet the needs of the individuals who present for emergency care.

To avoid any misunderstanding of our policies in this area, we are revising proposed § 489.24(j) in this final rule to state the conditions under which simultaneous calls and elective surgery while on call are permitted.

7. Limiting On-Call Responsibility by Subspecialty

Comment: Some commenters stated that physicians' hospital privileges are typically more expansive than their actual scope of practice in that a physician privileged in a broad specialty might in fact function only within a much narrower subspecialty. For example, a physician privileged by the hospital to treat all orthopedic cases might in fact limit his or her practice to pediatric cases. The commenters expressed concern that such a subspecialty physician might be disadvantaged by agreeing to be on call, since he or she could then be expected to treat types of patients that the physician would not normally see. To prevent this outcome, the commenters recommended that the EMTALA

regulations be revised to authorize such a physician to decline to come in when called if he or she believes that another physician can more competently care for the patient and should be called in.

Another commenter suggested that while subspecialists may be better qualified in their general specialties than emergency physicians, generalists may not necessarily be equally competent for all patients. For example, an ophthalmologist specializing in corneal or retinal surgery may have greater expertise in general ophthalmology than an emergency physician, but a fully competent general surgeon may nevertheless not have the specialized training and experience needed to perform emergency surgery on an infant. The commenter recommended that the regulations be revised to make it clear that, in such cases, the on-call physician is permitted to fulfill his or her on-call obligation by calling in another physician who has the necessary skills to care for the patient. The commenter also recommended formation of a private-public work group, similar to that described in proposed legislation (H.R. 3191, the "Medicare Appeals, Regulatory, and Contracting Improvement Act of 2001") to assist in resolving on-call issues. Another commenter recommended that the regulations be revised to state that physicians are not required to respond to calls for types of care for which they do not hold privileges.

Response: We agree with the commenter who stated the general principle is that patients should receive the best emergency care available. However, as pointed out by another commenter, a physician who is in a narrow subspecialty may, in fact, be medically competent in his or her general specialty, and in particular may be able to promptly contribute to the individual's care by bringing to bear skills and expertise that are not available to the emergency physician or other qualified medical personnel at the hospital. While the emergency physician and the on-call specialist may need to discuss the best way to meet the individual's medical needs, we also believe any disagreement between the two regarding the need for an on-call physician to come to the hospital and examine the individual must be resolved by deferring to the medical judgment of the emergency physician or other practitioner who has personally examined the individual and is currently treating the individual. We understand the concern of the commenter who believed the final rule should state that physicians are not required to respond to calls for types of care for which they do not have privileges. However, we do not agree that a revision to the regulation is needed. On the contrary, we believe that it is the responsibility of the hospital that is maintaining the on-call list to ensure that physicians on the list are granted whatever privileges they would need to furnish care in the facility. Therefore, we are not revising the final rule as recommended by this commenter.

Comment: Some commenters recommended that the EMTALA regulations be revised to state explicitly that there may be situations in which a transfer to another medical facility, which may be either a hospital or a physician office, would be appropriate because the skills and experience of the local on-call physician may not be ideal for a particular individual. One commenter explained that such a clarification would help avoid inconveniencing on-call physicians, who might otherwise be required to come to a hospital to attend to relatively minor needs.

Response: While we agree that there may be some cases in which it is more beneficial to an individual to be transferred to another facility because of the greater availability of specialty physician services, we do not believe any change to the regulations is needed to acknowledge this possibility. On the contrary, existing regulations at § 489.24(c)(1) (now § 489.24(d)(1) in this final rule) make it quite clear that an appropriate transfer is one in which the expected benefits of appropriate medical treatment at another facility outweigh the risks associated with transfer. We also do not believe that individuals being seen in emergency departments would regard their emergency medical conditions as minor needs. Therefore, we are not making any changes in the regulations in this final rule based on these comments.

Comment: One commenter recommended that proposed § 489.24(j) be further revised to state that specialty hospitals, particularly those without dedicated emergency departments, are not required to maintain on-call lists under EMTALA.

Response: Existing regulations at § 489.20(r)(2), which implement the requirement for an on-call list, make it clear that this requirement does not apply to any hospital other than one with a dedicated emergency department. Therefore, we do not believe a change in the regulations is needed to clarify this point.

8. Other On-Call Issues

Comment: Some commenters stated that some physicians may choose to come to a hospital to see private patients at times when they are not shown as being on call under the listing the hospital maintains for EMTALA purposes. The commenters believed such physicians should not be considered to be on call under EMTALA simply because they come to the hospital under these circumstances, and expressed the belief that such a policy would be consistent with EMTALA interpretive guidelines stating that physicians are not expected to be on call whenever they are visiting their own patients in a hospital.

Response: We understand that physicians may sometimes come to a hospital to see their own patients, either as part of regular rounds or in response to requests from the patient or the patient's family, and agree that visits of this type should not necessarily be interpreted as meaning that the physician is on call. On the other hand, some physicians have in the past expressed a desire to refuse to be included on a hospital's on-call list but nevertheless take calls selectively. These physicians might, for example, respond to calls for patients with whom they or a colleague at the hospital have established a doctor-patient relationship, while declining calls from other patients, including those whose ability to pay may be in question. Such a practice would clearly be a violation of EMTALA. Because it may be difficult to distinguish the two practices from one another outside the context of a careful review of patient records, we are not making any revision to this final rule based on this comment. However, we will keep it in mind as we develop the interpretative guidelines and training materials for implementing EMTALA.

Comment: One commenter expressed approval of the preamble statement (67 FR 31478 of the May 9, 2002 proposed rule) that exempting senior medical staff from on-call responsibilities does not necessarily violate EMTALA. However, this commenter believed that statement should also be reflected in the text of the final regulations.

Response: We continue to believe such exemptions are not necessarily inconsistent with EMTALA, but they were mentioned in the preamble to illustrate rather than define the types of flexibility a hospital may exercise in maintaining its on-call list in a way that best meets patient needs. Thus, we do not believe this one example of

flexibility should be singled out for inclusion in the regulations.

Comment: One commenter stated that Federally Qualified Health Centers (FQHCs) are required under policies of the Public Health Service to maintain referral arrangements with hospitals for acceptance of health center patients, and that it is recommended that FQHCs maintain admitting privileges at those hospitals for their patients. However, the commenter was concerned that any monetary penalties for noncompliance with EMTALA on-call responsibilities will have to be paid by the health centers, and that physicians who learn that they will incur an on-call responsibility at a hospital as a cost of being privileged there may choose to stop practicing at the health centers, thereby depriving the health centers' patients of the physicians' services. Therefore, the commenter recommended that CMS provide some safe harbors, such as unspecified personal services or a high volume of patients needing care, that would protect physicians from EMTALA liability if they fail to be on call or are on call but fail to come to the hospital emergency department when called.

Response: As we noted above, this final rule makes explicit provision for two of the occurrences that physicians and other commenters have indicated to us are responsible for physicians' inability to respond to calls even though they have agreed to do so. In addition, we plan to direct State surveyors, in enforcing the EMTALA provisions, to be aware of situations in which circumstances beyond a physician's control may prevent him or her from responding promptly to calls. We believe these actions on our part will ensure sufficient flexibility and, therefore, we are not at this time further defining a set of specific "safe harbors." However, we will continue to monitor the commenter's concerns and will undertake further rulemaking if warranted in the future.

Comment: One commenter stated that some physicians, such as orthopedists, frequently use physician assistants in their practices. The commenter provided a number of examples of how a physician assistant could respond appropriately to a call from an emergency department, participate in the screening of an individual, and either provide the necessary stabilization or post-stabilization services, or arrange for the performance of those services by the physician. The commenter asked us to clarify that, in some instances, physician assistants may appropriately provide on-call coverage, by revising the EMTALA regulations to state that physicians included on a hospital's on-call list may delegate their on-call responsibilities to the physician assistants they supervise, as long as all services provided by the physician assistants are furnished in accordance with State scope of practice laws and with hospital and medical bylaws.

Response: We agree that there may be circumstances in which a physician assistant may be the appropriate practitioner to respond to a call from an emergency department or other hospital department that is providing screening or stabilization mandated by EMTALA. However, any decision as to whether to respond in person or direct the physician assistant to respond should be made by the responsible on-call physician, based on the individual's medical needs and the capabilities of the hospital, and would, of course, be appropriate only if it is consistent with applicable State scope of practice laws and hospital bylaws, rules, and regulations.

D. Provisions of the Final Rule

In this final rule, we are adopting the proposed § 489.24(j) as final with the following modifications: We are specifying that the on-call list must be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA, in accordance with the capability of the hospital, including the availability of on-call physicians. We also are revising paragraph (j) to state the conditions under which simultaneous call and elective surgery while on call are permitted. For editorial reasons, we are revising the language of § 489.24 to state under paragraph (j)(3)(ii) that hospitals must "provide" rather than "insure" that emergency services are available. No change in policy is being made by this editorial change.

XII. EMTALA Applicability to Hospital-Owned Ambulances (§ 489.24(b))

A. Background

We stated in the June 22, 1994 final rule (59 FR 32098) that if an individual is in an ambulance owned and operated by a hospital, the individual is considered to have come to the hospital's emergency department, even if the ambulance is not on hospital property. This policy, currently set forth at § 489.24(b), was necessary because we were concerned that some hospitals that owned and operated ambulances at that time were transporting individuals who had called for an ambulance to other hospitals, thereby evading their EMTALA responsibilities to the individuals.

Concerns have since been raised by the provider industry about applications of this policy to ambulances that are owned by hospitals but are operating under communitywide EMS protocols that may require the hospital-owned and other ambulances to transport individuals to locations other than the hospitals that own the ambulances. For instance, we understand that some community protocols require ambulances to transport individuals to the closest hospital to the individual geographically, whether or not that hospital owns the ambulance.

B. Provisions of the Proposed Rule

To avoid imposing requirements that are inconsistent with local EMS requirements, in the May 9, 2002 proposed rule, we proposed to clarify, at proposed revised § 489.24(b), in paragraph (3) of the definition of "Comes to the emergency department", an exception to our existing rule requiring EMTALA applicability to hospitals that own and operate ambulances. We proposed to account for hospital-owned ambulances operating under communitywide EMS protocols. Under our proposal, the rule on hospital-owned ambulances and EMTALA does not apply if the ambulance is operating under a communitywide EMS protocol that requires it to transport the individual to a hospital other than the hospital that owns the ambulance. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property.

C. Summary of Public Comments and Departmental Responses

Comment: A number of commenters expressed strong support for the proposal to clarify that EMTALA does not apply to a hospital-owned ambulance when the ambulance is operating under communitywide protocols that require it to transport an individual to a hospital other than the hospital that owns the ambulance. One commenter asked whether a hospital would have any EMTALA obligation with respect to a patient who refuses transport from the planned pickup site (for example, the site of an automobile accident), and whether EMTALA would apply if the physician in the emergency department provides "medical command."

Another commenter recommended that the regulations be further revised to state that individuals presenting to

hospital-owned ambulances are subject to EMTALA and must be transported to the hospital that owns the ambulance, unless the hospital EMS personnel on board the ambulance determine that doing so would put the patient's life or safety at risk. The commenter further recommended that if the on-board hospital EMS personnel believe that transporting the individual to the owner hospital would risk the life or health of the individual, the personnel should be authorized to redirect the ambulance to the closest appropriate hospital without violating EMTALA.

Response: We appreciate the support of those commenters who expressed approval of the proposal and have kept their views in mind in responding to other comments on this issue. In regard to the comment about an individual who refuses transport from a planned pickup site, we believe such cases should be treated as refusals to consent to treatment and should be handled in accordance with the requirements for documenting such refusals in existing § 489.24(c)(2) (redesignated in this final rule as § 489.24(d)(3)).

We understand that the term "hospital-owned ambulances operating under medical command" describes a situation in which the destination of an ambulance is not determined by the ambulance personnel but by a physician in radio contact with ambulances in the community. We believe individuals on board such ambulances would not be considered to have "come to the hospital" for EMTALA purposes if the physician providing the medical command is not employed or otherwise affiliated with the hospital that owns the ambulance. If the physician's direction of the ambulance (medical command) is provided subject to communitywide protocols that require the individual to be transported to a hospital other than the hospital that owns the ambulance, such as the closest appropriate hospital, the hospital would be considered to be operating under communitywide protocols. With respect to situations in which hospital EMS personnel on board the ambulance determine that transporting the individual to the owner hospital would put the patient's life or safety at risk, we recognize that there may be some situations in which redirection of the ambulance is necessary to protect the life or safety of the individual and that under these circumstances it would not be an EMTALA violation to transport the individual to the closest hospital capable of treating his or her condition. However, we believe such cases can best be identified and resolved on a case-by-case basis and, therefore, are not revising the final regulations based on this comment.

Comment: One commenter recommended that the proposed clarification of the nonapplicability of EMTALA to hospital-owned ambulances when the ambulance is operating under communitywide protocols be extended to air ambulances as well as ground ambulances.

Response: We agree and in this final rule are revising § 489.24(b), the definition of "come to the emergency department," accordingly.

Comment: One commenter recommended that guidance provided in the State Operations Manual, to the effect that hospitals have no EMTALA obligation with respect to individuals who are in ambulances that are neither hospital-owned and operated nor on hospital property, be incorporated into the regulatory language.

Response: We agree that this statement of policy is accurate, but believe the proposed regulatory language makes this clear. Therefore, we are not making revision in the final rule based on this comment.

Comment: One commenter referenced the recently issued CMS guidance, in the form of letters to Regional Administrators and State Survey Agencies, regarding EMTALA responsibilities in the event of a bioterrorist attack. The commenter believed this guidance might be viewed as being inconsistent with a hospital's statutory responsibility to provide screening services under EMTALA, and suggested that the regulatory language be revised to reflect the guidance, so that hospitals that follow it are not at risk for a citation of noncompliance with EMTALA.

Response: We agree that hospitals should be informed of their EMTALA responsibilities in the event of a bioterrorist attack or other national emergency. We also believe the commenter's suggestion is consistent with the intent of section 143 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188, enacted June 12, 2002). That legislation amended section 1135 of the Act to authorize the Secretary to temporarily waive or modify the application of certain Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) requirements, including requirements for the imposition of sanctions for the otherwise inappropriate transfer of an unstabilized individual, if the transfer arises out of the circumstances of the emergency.

To help inform hospitals of their responsibilities in such situations, we have added a new paragraph (a)(2) to § 489.24(a). The new paragraph specifies that sanctions under EMTALA for an inappropriate transfer during a national emergency do not apply to a hospital with a dedicated emergency department located in an emergency area, as specified in section 1135(g)(1) of the Act. In the event of such a national emergency, CMS would issue appropriate guidance to hospitals.

Comment: One commenter stated that, in some areas of the country, ambulance protocols requiring emergency patients to be taken to the closest appropriate hospital are not determined on a community-by-community basis. Instead, the protocols apparently are established by individual ambulance service medical directors in conformity with State law and are filed with the State EMS board. The commenter expressed concern that the proposed regulatory language on communitywide EMS protocols would not protect hospitals in such States from inappropriate EMTALA liability, and cited several examples of situations in which a hospital-owned and operated ambulance might be required to bypass appropriate hospitals to reach the owner hospital. To avoid this result, the commenter recommended that the regulations be revised either to state that hospital-owned and operated ambulances are not included in the definition of "hospital property" or to provide an exemption for hospital-owned ambulances operated in accordance with protocols on file with and approved by the State ambulance licensing authority.

Response: We agree that protocols mandated by State law should be given the same deference as those established on a communitywide basis. However, we believe the reference in § 489.24(b)(3)(i) to communitywide EMS protocols which direct that the individual be transported to a hospital other than the hospital that owns the ambulance is broad enough to encompass those communitywide protocols that have been adopted in conformity with State law. Therefore, we are not revising the provision in the final rule based on this comment.

Comment: One commenter stated that most ambulance protocols direct that individuals be taken to the "closest appropriate facility" rather than the "nearest hospital" and suggested that this change in wording of the regulation text would be appropriate because, in some cases, individuals may need to be taken to a freestanding emergency facility or some other location that is not a hospital. The commenter also recommended that hospital-owned and

operated ambulances be given an exemption from the requirements for situations in which the individual or family asks that the individual be transported to another facility other than the hospital that owns the ambulance.

Response: We agree that it would be more appropriate to refer to requirements that the individuals be taken to the "closest appropriate facility" rather than the "nearest hospital", and are including this change in paragraph (3) of the definition of "come to the emergency department" under § 489.24(b) of this final rule.

Regarding the redirection of an ambulance at the request of the individual's family, we believe existing regulations at § 489.24(c)(2) (now § 489.24(d)(3) of this final rule) regarding informed refusals of treatment would permit the ambulance to transport the individual to another facility. A medical record for the individual must be established and the refusal clearly documented in that record, in accordance with these regulatory requirements.

D. Provisions of the Final Rule

We are adopting, as final, the proposed revision to paragraph (3) under the definition of "come to the emergency department" under § 489.24(b) as it related to the applicability to EMTALA to hospital-owned ambulances, with the following modifications:

We are specifying the nonapplicability of EMTALA to hospital-owned "air" ambulances (in addition to ground ambulances), when the ambulance is operating under communitywide protocols.

We are specifying that an individual in an ambulance owned and operated by the hospital is not considered to have "come to the emergency department" if the ambulance is operated under communitywide EMS protocols or EMS protocols "mandated by State law" that direct it to transport the individual to a hospital other than the hospital that owns the ambulance. We also are specifying that an individual in an ambulance owned and operated by the hospital is not considered to have "come to the emergency department" if the ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance or if the physician's direction of the destination of the ambulance is subject to communitywide protocols that require the individual to be transported to a hospital other than the hospital that owns the ambulance.

We are changing the term "closest hospital" to "closest appropriate facility".

In addition, we are adding a new § 489.24(a)(2) to specify EMTALA responsibilities in the event of a bioterrorist attack.

XIII. Conditions of Participation for Hospitals

We are reminding hospitals and others that while these final regulations make it clear that, while stabilizing an individual with an emergency medical condition (or admitting the individual to the hospital as an inpatient) relieves the hospital of its EMTALA obligations, it does not relieve the hospital of all further responsibility for the patient who is admitted. Stabilization or inpatient admission also does not indicate that the hospital is thus free to improperly discharge or transfer the individual to another facility. Inpatients who experience acute medical conditions receive protections under the Medicare hospital CoPs, which are found at 42 CFR part 482. In addition, as noted earlier in this preamble and in the May 9, 2002 proposed rule preamble, we believe that outpatients who experience what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs. There are six hospital CoPs that provide these protections: emergency services, governing body, discharge planning, quality assessment and performance improvement, medical staff, and outpatient services. In the May 9, 2002 proposed rule, we proposed to make only one change in these CoPs: one relating to the governing body having written policies and procedures in effect for off-campus departments that do not offer emergency services for appraisal of emergencies and referral when appropriate (§ 482.12(f)(3)).

If a hospital inpatient develops an acute medical condition and the hospital is one that provides emergency services, the hospital is required to ensure that it meets the emergency needs of the patient in accordance with accepted standards of practice. Similarly, regardless of whether the hospital provides emergency services, if an inpatient develops an acute medical condition, the governing body CoP (§ 482.12(f)(2), which applies to all Medicare-participating hospitals) would apply. This CoP requires that the hospital governing body must ensure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The discharge planning CoP (§ 482.43, which applies to all Medicare-participating hospitals) requires hospitals to have a discharge planning process that applies to all patients. This CoP ensures that patient needs are identified and that transfers and referrals reflecting adequate discharge planning are made by the hospital. If an inpatient develops an acute medical condition and the hospital either does not offer emergency services or does not have the capability to provide necessary treatment, a transfer to another hospital with the capabilities to treat the emergency medical condition could be warranted. Hospitals are required to meet the discharge planning CoP in carrying out such a transfer.

The hospital CoP governing medical staff (§ 482.22) requires that the hospital have an organized medical staff that operates under bylaws approved by the governing body and is responsible to the governing body for the quality of medical care provided to patients by the hospital. Should the medical staff not be held accountable to the governing body for problems regarding a lack of provision of care to an inpatient who develops an emergency medical condition, this lack of accountability may be reviewed under the medical staff CoP, as well, and may result in a citation of noncompliance at the medical staff condition level for the hospital.

Finally, the quality assessment and performance improvement CoP (§ 482.21, which applies to all Medicare-participating hospitals) requires the governing body to ensure that there is an effective, hospital-wide quality assessment and performance improvement program to evaluate the provision of patient care. In order to comply with this CoP, the hospital must evaluate the care it provides hospital-wide. Complaints regarding a lack of provision of care to an inpatient who develops an emergency medical condition must be addressed under the hospital's quality assurance program and may be reviewed under the quality assessment and performance improvement CoP.

A hospital's failure to meet the CoPs requirements cited above may result in a finding of noncompliance at the condition level for the hospital and lead to termination of the hospital's Medicare provider agreement. As we explained in the preamble to the January 24, 2003 final rule (69 FR 3435), the CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The

CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients. The State survey agencies (SAs), in accordance with section 1864 of the Social Security Act (the Act), survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the instructions in the State Operations Manual (SOM), (Health Care Financing Administration (HCFA) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures and probes that elaborate on regulatory intent and give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether hospitals have met the CoPs and report their recommendations to us. The standards, procedures, and SA personnel involved in developing recommendations regarding EMTALA compliance are the same as those for recommendations regarding CoP compliance, since alleged violations of EMTALA are treated as allegations that a hospital has not complied with a requirement for Medicare participation.

Under the authority of section 1865 of the Act and the regulations at § 488.5, hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed to meet the requirements in the CoPs, and therefore, are not routinely surveyed for CoP compliance by the SAs. However, all Medicare and Medicaid participating hospitals are required to be in compliance with our CoPs regardless of their accreditation status.

Comment: Some commenters expressed general approval of the proposed revision to § 482.12(f), which is applicable to hospitals that provide emergency services but have departments off campuses that do not provide emergency services.

Response: We appreciate these commenters' support and have kept their views in mind in evaluating the other comments recommending specific changes in this final rule.

Comment: Some commenters stated that the proposed revision to § 482.12(f) seems to imply that hospitals must have staff trained in appraisal of emergencies on duty on a 24-hour per day, 7-day a week basis to comply with the requirement. The commenters believed that this would be an unreasonable requirement.

Response: We agree that such a requirement for off-campus departments would be unreasonably stringent. Therefore, we plan to clarify in the interpretive guidelines or training materials used to implement this requirement that the policies and procedures in place for appraisal of emergencies and referral when appropriate must be implemented only within the hours of operation and normal staffing capability of the facility.

Comment: Some commenters opposed adding a specific CoP provision for off-campus departments of hospitals that have dedicated emergency departments but do not offer emergency services at their off-campus locations. The commenters believed this is an unnecessary burden on hospital governing bodies and medical staffs.

Response: We do not agree that adding this condition will impose an unnecessary burden on hospitals. First, the amount of burden will be minimal, because the regulation does not require that the facilities provide emergency care or add to their existing medical capabilities, but only that appropriate policies and procedures be in place. While developing and implementing these policies and procedures will require some effort from facilities that do not have them in place, the effort involved should be considerably less than that required to comply with current regulations at § 489.24(i) regarding EMTALA compliance by hospitals with off-campus nonemergency departments, which are being replaced by the condition. We also do not agree that any remaining burden associated with the revised requirement is unnecessary. On the contrary, the ability of such an off-campus facility to respond promptly and appropriately to an unexpected request for emergency care can be crucial to the health and safety of the individual with the emergency condition.

Because we believe that the burden of having a plan in place to deal with an occasional emergency is minimal and the potential benefit to the individual of having such a plan is considerable, we are not making changes to the proposed CoP in this final rule in response to this comment.

XIV. Other Issues

A. Editorial/Clarifying Changes

In addition to the changes to § 489.24 discussed in sections V. through XIII. of this preamble, we are revising § 489.24(d)(3) (Refusal to consent to treatment) to refer to an individual or a person acting on the individual's behalf who "does not consent to the examination or treatment," rather than referring to an individual or a person acting on the individual's behalf who "refuses to consent to examination and treatment." We are making a parallel change in § 489.24(d)(5) (Refusal to consent to transfer). We are making these changes only for editorial reasons and in the interest of clarity; these revisions do not represent any change in policy.

B. Out-of-Scope Comments

We received a number of public comments on issues that were not addressed as part of the May 9, 2002 proposed rule. Because the issues addressed in the comments were not part of the proposed rule, we are not providing responses to them in this final rule. We will consider them in the future if we consider changes in related policy areas.

XV. Information Collection Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

§ 482.12 Conditions of Participation: Governing Body

New § 482.12(f)(3) specifies that, if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff have written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

While this information collection requirement is subject to the PRA, the fact that this requirement is a usual, customary, and prudent business and

medical practice exempts the burden associated with this requirement from the PRA as stipulated under 5 CFR 1320.3(b)(2). It is standard for medical facilities to have written policies and procedures pertaining to medical emergencies. Having written policies and procedures saves time deciding what to do and thus benefits the patient; it also gives the provider liability protection.

In the May 9, 2002 proposed rule (67 FR 31496), we solicited, public comment on this information collection requirement. However, we did not receive any public comments on this information collection requirement.

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

Paragraph (d) of this section requires that, if the hospital offers an individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment: (1) The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual; (2) the hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf); and (3) the written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

Paragraph (d) of this section also requires that, if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) does not consent to the transfer: (1) The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf); (2) the written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal; and (3) the medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

The burden associated with these requirements is the time it will take a hospital to secure a written refusal, create a written document containing the information the patient has been given, and describing in the patient's record what was refused. These information collection requirements are currently approved under 0938–0667.

Paragraph (j) of this section requires that each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients who are receiving services required under this section in accordance with the resources available to the hospital, including the availability of on-call physicians. It also requires that the hospital have written policies and procedures in place to respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control and to provide that emergency services are available to meet the needs of patients with emergency medical conditions if it elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties.

The burden associated with these requirements is the time it will take to create the list and write down the policies and procedures. We believe that these actions reflect usual, customary, and prudent medical and business practices; the burden is exempt from the PRA under 5 CFR 1320.3(b)(2). We believe that the providers have the necessary written information available to the staff in times of emergencies to reduce the time it takes to contact a doctor or to decide what to do if the doctor is unavailable. These actions benefit the patient and give the provider liability protection.

We note that these requirements in paragraph (j) are revisions of provisions that were included in the May 9, 2002 proposed rule.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown, CMS–1063–F Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

XVI. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this final rule is not a major rule as defined in 5 U.S.C. 804(2). As explained below, we do not have sufficient information to estimate the precise economic impact of this final rule. However, in general, this final rule diminishes rather than increases the EMTALA compliance burden on hospitals and physicians as this burden exists under current regulations. In both the previous EMTALA rules, the proposed EMTALA rule published on June 16, 1988 (53 FR 22513) and the preamble to the interim final rule published on June 22, 1994 (59 FR 32120), we explained, and the Secretary certified, that those regulations would not have a significant impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. As explained above, this final rule further reduces compliance burden and cost. Therefore, we estimate that the total impact of these changes will be less than the threshold for a major rule ($100 million or more in any 1 year).

C. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

In the preamble of the May 9, 2002 proposed rule, we stated that we believed it would be difficult to quantify the impact of the proposed changes and solicited comments on how such an impact estimate could be developed. We did not receive any comments on this point. Neither the proposed EMTALA rule published on June 16, 1988 (53 FR 22513) nor the interim final rule published on June 22, 1994 (50 FR 32086) included a quantitative analysis of the economic impact of the rule. However, in the preamble to each rule, we explained that because the great majority of hospitals do not refuse to treat individuals or transfer patients inappropriately based on their perceived inability to pay, the economic impact of those rules was minimal. Since this rule is only a modification of the previous EMTALA rules, we believe that the impact of this final rule is also minimal. For the reasons explained above, we are confident that the overall effect of this final rule will be to reduce rather than increase the EMTALA compliance burden for hospitals and physicians. For example, the compliance burden for hospitals will be reduced because off-campus provider-based departments that are not dedicated emergency departments will no longer have any EMTALA responsibilities. The burden for physicians should be reduced by the changes that allow them to be on call simultaneously at multiple locations, and to schedule other procedures while they are on call. Because we do not have enough information to precisely predict the dollar amount of the reduced burden, we have not attempted to produce a quantified estimate of the impact of this final rule. However, based on the reduction in burden relative to current regulations, we have determined that this final rule will not have a significant impact on a substantial number of small entities.

D. Effects on Rural Hospitals

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of payments to hospitals, we classify these hospitals as urban hospitals. As explained above, the compliance burden and cost associated with this final rule is expected to be significantly less than the burden associated with existing regulations. Based on the reduction in burden relative to current regulations, we have determined that this final rule will not have a significant impact on the operations of small rural hospitals.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing a final rule that has been preceded by a proposed rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not mandate any requirements that may result in an expenditure, in any 1 year for State, local, or tribal governments or for the private sector of $110 million.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule in light of Executive Order 13132 and have determined that it will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant program-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in this preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ A. Part 413 is amended as follows:

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Section 413.65 is amended by adding introductory text under paragraph (g) and revising paragraph (g)(1) to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

* * * * *

(g) *Obligations of hospital outpatient departments and hospital-based entities.* To qualify for provider-based status in relation to a hospital, a facility or organization must comply with the following requirements:

(1) The following departments must comply with the antidumping rules of § 489.20(l), (m), (q), and (r) and § 489.24 of this chapter:

(i) Any facility or organization that is located on the main hospital campus and is treated by Medicare under this section as a department of the hospital; and

(ii) Any facility or organization that is located off the main hospital campus that is treated by Medicare under this section as a department of the hospital and is a dedicated emergency department, as defined in § 489.24(b) of this chapter.

* * * * *

PART 482—CONDITIONS FOR PARTICIPTION FOR HOSPITALS

■ B. Part 482 is amended as follows:
■ 1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1320 and 1395hh).

■ 2. Section 482.12 is amended by adding a new paragraph (f)(3) to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(f) *Standard: Emergency services.*

* * *

(3) If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ C. Part 489 is amended as follows:
■ 1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 489.24 is amended by—
■ A. Revising paragraph (a).
■ B. Republishing the introductory text of paragraph (b) and revising the definitions of "Comes to the emergency department" and "Hospital with an emergency department".
■ C. Adding definitions of "Dedicated emergency department", "Hospital property", "Inpatient", and "Patient" in alphabetical order under paragraph (b).
■ D. Under the definition of "Emergency medical condition" under paragraph (b), redesignating paragraphs (i), (i)(A), (i)(B), (i)(C), (ii), (ii)(A), and (ii)(B) as paragraphs (1), (1)(i), (1)(ii), (1)(iii), (2), (2)(i), and (2)(ii), respectively.
■ E. Under the definition of "Participating hospital" under paragraph (b), redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.
■ F. Under the definitions of "Stabilized" and "To stabilize" under paragraph (b), "paragraph (i)" is removed and "paragraph (1)" is added in its place; and "paragraph (ii)" is removed and "paragraph (2)" is added in its place.
■ G. Removing paragraph (i); and redesignating paragraph (c) through (h) as paragraphs (d) through (i), respectively.
■ H. Adding new paragraphs (c) and (j).
■ I. Revising newly redesignated paragraph (d).
■ J. Making the following cross-reference changes:
■ i. In redesignated paragraph (e)(1)(i), "paragraph (d)(2)" is removed and "paragraph (e)(2)" is added in its place.
■ ii. In redesignated paragraph (e)(1)(ii)(C), "paragraph (d)(1)(ii)(B)" is removed and "paragraph (e)(1)(ii)(B)" is added in its place.
■ iii. In redesignated paragraph (e)(2)(iii), "paragraph (d)(1)(ii)" is removed and "paragraph (e)(1)(ii)" is added in its place.
■ iv. In redesignated paragraph (e)(2)(iii), "paragraph (f)" is removed and "paragraph (g)" is added in its place.
■ v. In redesignated paragraph (e)(3), "paragraph (d)(1)(ii)(C)" is removed and "paragraph (e)(1)(ii)(C)" is added in its place.
■ vi. In redesignated paragraph (g), "paragraph (a) through (e)" is removed and "paragraphs (a) through (f)" is added in its place.
■ vii. In redesignated paragraph (h)(1), "paragraph (g)(3)" is removed and "paragraph (h)(3)" is added in its place; and "paragraph (g)(2)(iv) and (v)" is removed and "paragraphs (h)(2)(iv) and (v)" is added in its place.
■ viii. In redesignated paragraph (h)(2) introductory text, "paragraph (g)(1)" is removed and "paragraph (h)(1)" is added in its place.
■ ix. In redesignated paragraph (h)(2)(iii)(B), "paragraph (g)(2)(iii)(A)" is removed and "paragraph (h)(2)(iii)(A)" is added in its place.
■ x. In redesignated paragraph (h)(2)(vi), "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.
■ xi. In redesignated paragraph (h)(4), "paragraph (g)" is removed and "paragraph (h)" is added in its place; and "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

The additions and revisions read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *Applicability of provisions of this section.* (1) In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay) "comes to the emergency department", as defined in paragraph (b) of this section, the hospital must—

(i) Provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) who is determined qualified by hospital bylaws or rules and regulations and who meets the requirements of § 482.55 of this chapter concerning emergency services personnel and direction; and

(ii) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section. If the hospital admits the individual as an inpatient for further treatment, the hospital's obligation under this section ends, as specified in paragraph (d)(2) of this section.

(2) *Nonapplicability of provisions of this section.* Sanctions under this section for inappropriate transfer during a national emergency do not apply to a hospital with a dedicated emergency department located in an emergency area, as specified in section 1135(g)(1) of the Act.

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

* * * * *

Comes to the emergency department means, with respect to an individual who is not a patient (as defined in this section), the individual—

(1) Has presented at a hospital's dedicated emergency department, as defined in this section, and requests examination or treatment for a medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;

(2) Has presented on hospital property, as defined in this section, other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;

(3) Is in a ground or air ambulance owned and operated by the hospital for purposes of examination and treatment for a medical condition at a hospital's

dedicated emergency department, even if the ambulance is not on hospital grounds. However, an individual in an ambulance owned and operated by the hospital is not considered to have "come to the hospital's emergency department" if—

(i) The ambulance is operated under communitywide emergency medical service (EMS) protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property;

(ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance; or

(4) Is in a ground or air nonhospital-owned ambulance on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department. However, an individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. The hospital may direct the ambulance to another facility if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's diversion instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

Dedicated emergency department means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;

(2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(3) During the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

* * * * *

Hospital property means the entire main hospital campus as defined in § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

Hospital with an emergency department means a hospital with a dedicated emergency department as defined in this paragraph (b).

Inpatient means an individual who is admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services as described in § 409.10(a) of this chapter with the expectation that he or she will remain at least overnight and occupy a bed even though the situation later develops that the individual can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.

* * * * *

Patient means—

(1) An individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2 of this chapter, other than an encounter that the hospital is obligated by this section to provide;

(2) An individual who has been admitted as an inpatient, as defined in this section.

* * * * *

(c) *Use of dedicated emergency department for nonemergency services.* If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

(d) *Necessary stabilizing treatment for emergency medical conditions.*—(1) *General.* Subject to the provisions of paragraph (d)(2) of this section, if any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition.

(ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.

(2) *Exception: Application to inpatients.* (i) If a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual.

(ii) This section is not applicable to an inpatient who was admitted for elective (nonemergency) diagnosis or treatment.

(iii) A hospital is required by the conditions of participation for hospitals under Part 482 of this chapter to provide care to its inpatients in accordance with those conditions of participation.

(3) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

(4) *Delay in examination or treatment.*

(i) A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraph (d)(1) of this section in order to inquire about the individual's method of payment or insurance status.

(ii) A participating hospital may not seek, or direct an individual to seek, authorization from the individual's insurance company for screening or stabilization services to be furnished by a hospital, physician, or nonphysician practitioner to an individual until after the hospital has provided the appropriate medical screening examination required under paragraph (a) of this section, and initiated any further medical examination and treatment that may be required to stabilize the emergency medical condition under paragraph (d)(1) of this section.

(iii) An emergency physician or nonphysician practitioner is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services required under paragraph (a) or paragraphs (d)(1) and (d)(2) of this section.

(iv) Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by this section, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.

(5) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (d)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) does not consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

* * * * *

(j) *Availability of on-call physicians.* (1) Each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients who are receiving services required under this section in accordance with the resources available to the hospital, including the availability of on-call physicians.

(2) The hospital must have written policies and procedures in place—

(i) To respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control; and

(ii) To provide that emergency services are available to meet the needs of patients with emergency medical conditions if it elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 3, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 27, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–22594 Filed 8–29–03; 4:44 pm]

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Federal Register

Tuesday,
September 9, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1262–P]

RIN 0938–AM72

Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the classification criterion, commonly known as the "75 percent rule," used to classify a hospital as an inpatient rehabilitation facility (IRF). This proposed rule would also modify and expand the medical conditions listed in the 75 percent rule regulatory requirements as well as lower the percentage of patients required to fall within one of the specified list of medical criteria.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 3, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1262–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1262–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597; or Pete Diaz, (410) 786–1235; or Nora Hoban, (410) 786–0675.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Condition for Classification as an IRF

Background

A. Overview of the Inpatient Rehabilitation Facility Prospective Payment System

Section 1886(j) of the Social Security Act (the Act) provides for the implementation of a prospective payment system (PPS) under Medicare for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital (referred to as an inpatient rehabilitation facility (IRF)). Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary the discretion to define a rehabilitation hospital and unit. The regulations at 42 CFR 412.23(b), 412.25, and 412.29, specify the criteria for a provider to be classified as a rehabilitation hospital or rehabilitation unit. Hospitals and units meeting those criteria are eligible to be paid on a prospective payment basis as an IRF under the IRF PPS.

Payments made under the IRF PPS cover inpatient operating and capital costs of furnishing covered intensive rehabilitation services (that is, routine, ancillary, and capital costs), but do not cover costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Covered intensive rehabilitation services include services for which benefits are provided under Medicare Part A (Hospital Insurance).

Payments under the IRF PPS are made on a per discharge basis. A patient classification system is used to assign patients in IRFs into case-mix groups (CMGs). The IRF PPS uses Federal prospective payment rates across distinct CMGs. We construct a majority of the CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (though some CMGs do not use cognitive status or age in their definition). We construct special CMGs to account for very short stays and for patients who expire during the IRF stay.

For each CMG, we develop relative weighting factors to account for a patient's clinical characteristics and expected resource consumption. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors are "tiered" based on the estimated effect that the comorbidities from appendix C of the August 7, 2001 final rule (66 FR 41414) have on resource use.

The Federal prospective payment rates are established using a standard payment amount (also referred to as the budget neutral conversion factor). For each of the tiers within a CMG, we apply the relative weighting factors to the budget neutral conversion factor to compute the unadjusted Federal prospective payment rates.

Adjustments that account for geographic variations in wages (wage index), for the percentage of low-income patients, and for facilities located in a rural area are applied to the unadjusted Federal prospective payment rates. In addition, adjustments are made for early transfers of patients to other facilities, interrupted stays, and high-cost outliers (cases with usually extraordinarily high costs).

The regulations implementing the IRF PPS provisions are presently in 42 CFR part 412, subpart P. Regulations governing the requirements for classification of hospitals as IRFs are located in § 412.22, § 412.23, § 412.25, and § 412.29. Section 412.23(b)(2) is commonly known as the "75 percent

rule" and specifies one of the criteria Medicare uses for classifying a hospital or unit of a hospital as an IRF. This regulation provides that during its most recent cost reporting period 75 percent of an IRF's total patient population required intensive rehabilitation services for treatment of one or more of the medical conditions specified in § 412.23(b)(2).

For a more complete discussion of the development of the IRF PPS see our August 7, 2001 final rule (66 FR 41316). We also have established a CMS website that contains useful information regarding the IRF PPS. The website URL is *http://www.cms.hhs.gov/providers/irfpps/default.asp* and may be accessed to download or view publications, software, and other information pertinent to the IRF PPS.

B. Recent Developments on the 75 Percent Rule

1. May 2003 Proposed Rule

On May 16, 2003, we published a proposed rule titled "Medicare Program; Changes to the Inpatient Rehabilitation Facility Prospective Payment System and Fiscal Year 2004 Rates" in the **Federal Register** (68 FR 26786) to propose updates to the IRF Federal prospective payment rates for FY 2004, to be effective for discharges occurring on or after October 1, 2003 and before October 1, 2004. We published the final rule on August 1, 2003 (68 FR 45674). The final rule specified the comments we received in response to our proposed policies and the final regulations regarding the proposed update to IRF PPS for FY 2004.

In the May 16, 2003 proposed rule, we solicited public comments on the regulatory requirements in § 412.23(b)(2). As stated previously and discussed more fully in section I.B.2. of this preamble, § 412.23(b)(2) provides that the requirements of 75 percent rule be met for a provider to be classified as an IRF. On May 19, 2003, we held a Town Hall meeting at our headquarters in Baltimore, MD, in which views regarding all aspects of the IRF PPS could be expressed. Hundreds of people participated in the Town Hall meeting either by attending at CMS headquarters or by a conference call. Most of the participants, however, limited their testimony to the 75 percent rule.

In response to the May 16, 2003 proposed rule, we received over 6,000 timely public comments regarding the regulatory requirements in § 412.23(b)(2). The primary issues discussed during the Town Hall meeting and in the public comments are summarized as follows:

- The regulatory requirement specifying the 10 medical conditions contained in § 412.23(b)(2) should be repealed or amended.
- The 10 medical conditions specified in § 412.23(b)(2) do not adequately reflect current care in IRFs.
- The medical conditions specified in § 412.23(b)(2) have not been updated in 20 years and should be revised or re-written to include other diagnoses.
- Some of the medical conditions specified in § 412.23(b)(2) are vague; they have little clinical relevance; and are inconsistently interpreted by our fiscal intermediaries who are charged with enforcing the 75 percent rule.
- CMS administrative data indicate most IRFs are not in compliance with § 412.23(b)(2).
- Classification as an IRF should be based on 20 of the 21 RICs.
- Enforcement of the rule could force many IRFs to close.
- Enforcement of the rule limits access to care.
- Treatment in other rehabilitation treatment settings is inferior to treatment furnished in an IRF.

In the May 16, 2003 proposed rule, we did not propose amending the regulatory requirements in § 412.23(b)(2). In this proposed rule, we are proposing amending the requirements in § 412.23(b)(2) as discussed in section II of the preamble.

2. Classification as an IRF Under the 75 Percent Rule

As stated in the August 7, 2001 final rule, we did not change the survey and certification procedures for classification as an IRF. Currently, a hospital or unit of a hospital must first be deemed excluded from the diagnosis-related group (DRG)-based acute care hospital PPS to be paid under the IRF PPS and must meet the general requirements in subpart B of part 412. Secondly, the excluded hospital or unit of the hospital must meet the conditions for payment under the IRF PPS at § 412.604. As specified at § 412.604(b), a provider, among other things, must be in compliance with all the criteria specified in § 412.23(b) to be classified as an IRF.

Under § 412.23(b)(2) of the existing regulations, a facility may be classified as an IRF if it can show that, during its most recent 12-month cost reporting period, it served an inpatient population of whom at least 75 percent required intensive rehabilitation services for the treatment of one or more of the following conditions:

- Stroke.
- Spinal cord injury.
- Congenital deformity.
- Amputation.
- Major multiple trauma.
- Fracture of femur (hip fracture).
- Brain injury.
- Polyarthritis, including rheumatoid arthritis.
- Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
- Burns.

C. Statutory and Regulatory Background on the 75 Percent Rule

We initially stipulated the "75 percent" requirement in the September 1, 1983, interim final rule with comment period entitled "Medicare Program; Prospective Payments for Medicare Inpatient Hospital Services" (48 FR 39752). That interim final rule implemented the Social Security Amendments of 1983 (Pub. L. 98–21), changing the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a diagnosis-specific inpatient PPS. However, the rule stipulated that, in accordance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act, both a rehabilitation unit, which is a distinct part of a hospital, and a rehabilitation hospital would be excluded from the IPPS. We noted that sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act also gave the Secretary broad discretion to define a "rehabilitation unit" and a "rehabilitation hospital."

We consulted with the Joint Commission on Accreditation of Hospitals (JCAH), and other accrediting organizations (JCAH is currently known as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) to define a rehabilitation hospital. The criteria we included in our definition of a rehabilitation hospital incorporated some of the accreditation requirements of these organizations. The definition also included other criteria, which we believed distinguished a rehabilitation hospital from a hospital that furnished general medical and surgical services as well as some rehabilitation services. One criterion was that "The hospital must be primarily engaged in furnishing intensive rehabilitation services as demonstrated by patient medical records showing that, during the hospital's most recently completed 12-month cost reporting period, at least 75 percent of the hospital's inpatients were treated for one or more conditions specified in these regulations that typically require intensive inpatient rehabilitation" (48 FR 39756). This requirement was originally specified in

§ 405.471(c)(2)(ii). We included this requirement, as a defining feature of a rehabilitation hospital, because we believed "that examining the types of conditions for which a hospital's inpatients are treated, and the proportion of patients treated for conditions that typically require intensive inpatient rehabilitation, will help distinguish those hospitals in which the provisions of rehabilitation services is a primary, rather than a secondary, goal" (48 FR 39756). Likewise, the 75 percent rule was a criterion for a rehabilitation unit.

The original medical conditions specified in § 405.471(c)(2)(ii) were stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur (hip fracture), brain injury, and polyarthritis, including rheumatoid arthritis. This list of eight medical conditions was partly based upon the information contained in a document entitled "Sample Screening Criteria for Review of Admissions to Comprehensive Medical Rehabilitation Hospitals/Units." This document was a product of the Committee on Rehabilitation Criteria for the Professional Standards Review Organization of the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. In addition, we received input from the National Association of Rehabilitation Facilities and the American Hospital Association. The requirement that 75 percent of an IRF's patient population must have one or more of the medical conditions listed in the regulation was due to the finding that the listed medical conditions accounted for approximately 75 percent of the admissions to IRFs at the time.

On January 3, 1984, we published a final rule entitled "Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services" (49 FR 234). On page 240 of that final rule, we summarized comments that requested inclusion of neurological disorders, burns, chronic pain, pulmonary disorders, and cardiac disorders in the list of medical conditions under the 75 percent rule. Our analysis of these comments led us to agree that neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns should be added to the original list of eight medical conditions under the 75 percent rule (49 FR 240). We did not agree with comments that we lower from 75 to 60 the percentage of patients that must meet one of the medical conditions. Nor did we agree with comments urging us to use IRF resource consumption, instead of a percentage of patients that must have one or more of the specified medical conditions, to help define what is an IRF (49 FR 239–240). We also rejected suggestions that when an IRF could not meet the 75 percent rule, the facility should still be defined as an IRF based on the types of services it furnished.

On August 31, 1984, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1985 Rates" (49 FR 34728). In that rule, we explained how the 75 percent rule applied to a new rehabilitation unit or rehabilitation hospital or to an increase in beds of an existing rehabilitation unit.

On March 29, 1985, we published a final rule entitled "Medicare Program; Prospective Payment System for Hospital Inpatient Services; Redesignation of Rules" (50 FR 12740). That rule redesignated provisions of § 405.471 that addressed the 75 percent rule as provisions under § 412.23.

On August 30, 1991, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates" (56 FR 43196). Since October 1, 1983, the regulations allowed a new rehabilitation hospital or a new rehabilitation unit, or an existing excluded rehabilitation unit that was to be expanded by the addition of new beds, to be excluded from the hospital inpatient PPS if, in addition to meeting other requirements, it submitted a written certification that during its first cost reporting period it would be in compliance with the 75 percent rule. The August 30, 1991, rule specified that, if these facilities were later found to have not complied with the 75 percent rule, we would determine the amount of actual payment under the exclusion, compute what we would have paid for the facility's services to Medicare patients under the IPPS, and recover any difference in accordance with the rules on the recoupment of overpayments.

On September 1, 1992, we published a final rule entitled "Medicare Program; Changes to Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates" (57 FR 39746). In the rule, we acknowledged that, for various reasons, a new rehabilitation hospital or a new rehabilitation unit might need to begin operations at some time other than at the start of its regular cost reporting period. Therefore, we specified that an IRF could submit a written certification that it would comply with the 75 percent rule for both a partial cost reporting period of up to 11 months and the subsequent full 12-month cost reporting period.

On September 1, 1994, we published a final rule entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 1995 Rates" (59 FR 45330). In that final rule, we stated that we had miscellaneous comments requesting that oncology cases, pulmonary disorders, cardiac disorders, and chronic pain be added to the list of medical conditions under the 75 percent rule (59 FR 45393). We responded that, although the 75 percent rule had not been addressed in the associated May 27, 1994, proposed rule, we would take these miscellaneous comments into consideration if we decided to make changes to the 75 percent rule.

When we published the August 7, 2001 final rule (66 FR 41316), we acknowledged we had received comments requesting that we update the list of medical conditions specified in § 412.23(b)(2) or eliminate the regulation (66 FR 41321). We responded that in the November 3, 2000 IRF PPS proposed rule, we had not proposed amending the requirements in § 412.23(b)(2), and we believed the existing regulation was appropriate and, therefore, we would not be revising the requirements in § 412.23(b)(2). However, we also stated that data obtained after we implemented the IRF PPS could lead us to reconsider amending the requirements in § 412.23(b)(2).

D. CMS Evaluation of Compliance With the 75 Percent Rule Regulatory Requirements in § 412.23(b)(2)

In the spring of 2002, we surveyed the Medicare fiscal intermediaries (FIs) in order to ascertain what methods were being used to verify whether IRFs were complying with the requirements in § 412.23(b)(2). Analysis of the survey data made us aware that inconsistent methods were being used to determine whether an IRF was in compliance with the regulation. Also, some IRFs were not being reviewed to determine whether they were in compliance with the regulation. These survey results led us to become concerned that some IRFs may be out of compliance with the regulation and inappropriately classified as an IRF. In addition, we were concerned that some FIs might be using different methods to verify compliance with the requirements in § 412.23(b)(2). This practice may have resulted in an IRF being incorrectly considered out of compliance with the regulation. Thus, this practice had the potential to cause an IRF to inappropriately lose its classification as

an IRF. Therefore, on June 7, 2002, we suspended enforcement of the regulatory requirements § 412.23(b)(2) until we conducted a careful examination of this area and determined whether the regulation should be changed and the operating procedures to verify compliance with the regulation.

In addition to our review of the administrative procedures used by our FIs, we conducted an analysis of CMS administrative data to attempt to estimate overall compliance with the regulation. We examined both the inpatient rehabilitation facility-patient assessment instrument (IRF–PAI) data and claims from the years 1998, 1999, and 2002. The patient assessment data was from January to August of 2002. We estimated that the percent of facilities with 75 percent of cases falling into the 10 conditions was 13.35 percent. We note that the analysis has a number of limitations. For example, it is not possible to discern from the diagnosis data on IRF–PAI or the claim whether there was a medical need to furnish the patient "intensive rehabilitation." The diagnosis describes only some aspects of a patient's clinical status, but the diagnosis alone does not determine the medical necessity of treating a patient in an IRF as opposed to another type of treatment setting. In addition, all the information necessary to classify a case under 1 of the 10 conditions may not be present on the claim (for example, polyarthritis).

In the May 16, 2003 proposed rule, we indicated that we would be instructing FIs to re-institute appropriate enforcement action if they were to determine that an IRF has not complied with the requirements in § 412.23(b)(2). We realize that an IRF may need time to come into compliance with the regulation. An IRF's cost reporting period is the time period used to ascertain compliance with the requirements in § 412.23(b)(2). Therefore, we indicated that we were instructing the FIs that they must use cost reporting periods that begin on or after October 1, 2003, as the time period to ascertain an IRF's compliance with the requirements in § 412.23(b)(2). While in the May 16, 2003 proposed rule, we did not propose changes to § 412.23(b)(2), we indicated that we expect that improved enforcement and compliance with the existing rule will have varying impacts on providers and beneficiaries.

In the May 16, 2003 proposed rule, we indicated that while it is difficult to predict the aggregate impact of improved compliance on provider payments, we expect that IRFs or their parent hospitals, or both (80 percent of IRFs are units of acute care hospitals), will change their behavior in a variety of ways. IRFs may change admission practices to alter their case-mix, either Medicare or total patient population, by admitting patients with more intensive rehabilitative needs that fall into the 10 conditions. This practice could have the effect of elevating the facility's revenues because cases requiring more intensive rehabilitation care generally receive higher Medicare payments than less complex cases. On the other hand, enforcement of the 75 percent rule may cause some IRFs to reduce the number of beds and/or reduce the number of admissions that may result in a reduction of the facility's revenues.

The existing regulation reflects the fact that up to 25 percent of medically necessary admissions may fall outside of the 10 conditions. These cases can continue to be admitted and treated under the regulation. Other cases may appropriately receive rehabilitative care in alternative settings. For certain medically complex cases, it may be appropriate to lengthen the patient's stay in an acute care setting in order to stabilize his or her condition to prepare the patient to participate in rehabilitation. Alternative settings for rehabilitative care could include the acute care hospital, skilled nursing facilities, long-term care hospitals, outpatient rehabilitation facilities, and home health care. For this reason, we did not expect to see reduced access to care for Medicare beneficiaries as a result of improved compliance. In addition, because many hospitals having a Medicare certified IRF unit also have one or more other subunits that provide rehabilitation, revenues from these cases may be generated elsewhere within the same hospital.

As noted above, on June 7, 2002, we suspended enforcement of the 75 percent rule under § 412.23(b)(2). We accomplished the suspension of enforcement by the issuance of instructions to the FIs and, therefore, it was a method that was administrative and operational. The suspension of enforcement was communicated to the IRFs by CMS Regional Offices, the FIs, or other means such as regular telephone conferences between CMS and providers. Although the May 16, 2003 proposed rule stated that we would be re-instituting enforcement of § 412.23(b)(2) for cost reporting periods that start on or after October 1, 2003, we decided to revisit this issue due to the extensive public comments received on this issue. We are now proposing to amend § 412.23(b)(2) in this proposed rule. Therefore, we will not be re-instituting enforcement of the regulation for cost reporting periods beginning on or after October 1, 2003 as stated in the May 16, 2003 proposed rule. Instead, we are now proposing that the proposed amendments in § 412.23(b)(2) would be applicable to cost reporting periods that start on or after the effective date specified in the final rule that will be published subsequent to this proposed rule. We anticipate that the effective date of the final rule would be January 1, 2004.

The intent of the policy specified at § 412.23(b)(2), and of other policy criteria for IRFs, is to ensure that these facilities are unique compared to other hospitals in that they provide intensive rehabilitative services in an inpatient setting. The uniqueness of these facilities is the justification for paying them under a separate payment system rather than paying them with the same payment system for acute care inpatient PPS. We believe it is crucial that Medicare maintain criteria to ensure that only facilities providing intensive rehabilitation are identified as IRFs so that services are paid appropriately under the IRF PPS. In addition, we believe it is imperative to identify conditions that would "typically require intensive inpatient rehabilitation" in IRFs because rehabilitation in general can be delivered in a variety of settings such as acute care hospitals, skilled nursing facilities, and outpatient settings.

II. Provisions of the Proposed Rule

For the reasons set forth in the preamble, in section II.A., we are proposing in § 412.23(b)(2) "Excluded hospitals: Classifications," to remove the reference to "75 percent." We are proposing a new § 412.23(b)(2)(i) that specifies for cost reporting periods beginning on or after January 1, 2004 and before January 1, 2007, the hospital has served an inpatient population of whom at least 65 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts towards the required 65 percent if—

- The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified at paragraph (b)(2)(iii) of this section;
- The patient has a comorbidity that falls in one of the conditions specified at paragraph (b)(2)(iii) of this section; and

• The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under subpart P of this part and which cannot be appropriately performed in another care setting covered under this title.

We are also proposing a new § 412.23(b)(2)(ii) that specifies for cost reporting periods beginning on or after January 1, 2007, the hospital has served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section.

In proposed § 412.23(b)(2)(iii), we are proposing to retain the existing conditions except for polyarthritis, which we are proposing to replace with the following three new conditions:

• Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies resulting in significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which results from a systemic disease activation immediately before admission, but has the potential to improve with more intensive rehabilitation.

• Systemic vasculidities with joint inflammation, resulting in significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which results from a systemic disease activation immediately before admission, but has the potential to improve with more intensive rehabilitation.

• Severe or advanced osteoarthritis (osteoarthrosis or degenerative joint disease) involving three or more major joints (elbow, shoulders, hips, or knees) with joint deformity and substantial loss of range of motion, atrophy, significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission but has the potential to improve with more intensive rehabilitation. (A joint replaced by a prosthesis no longer is considered to have osteoarthritis, or other arthritis, even though this condition was the reason for the joint replacement.)

Furthermore, in section II.C., we are proposing the possible use of comorbidities to verify compliance with proposed § 412.23(b)(2).

We are also proposing to phase-out the reduction from 75 percent to 65 percent and the use of commorbities to verify compliance, as discussed in section II.D., on January 1, 2007 with the intention of using data acquired and analysis performed during this period to revise the rule, if necessary, prior to the phase-out date. Lastly, in section II.E., we are proposing to change the time period used to determine compliance with the proposed 65 percent rule.

A. Change of the Percentage of the Inpatient Population

Under proposed § 412.23(b)(2)(i), we are proposing, starting with the effective date of the final rule and subject to the proposed phase-out provision discussed in section II.D., to change the percentage of the total IRF patient population used as a criterion to distinguish an IRF from an acute care hospital from 75 percent to 65 percent.

We recognize that rehabilitation practice may have changed since we developed the original list of conditions. We are, however, concerned that in some cases, patients may have been transferred inappropriately from the inpatient setting and, thus, these inappropriate responses may be responsible for some of these changes in rehabilitation practice rather than medical advances.

We believe that the list of medical conditions we are proposing in this rule identifies patients who typically can benefit from the type of intensive inpatient rehabilitation services provided by IRFs. We do, however, recognize that there may be certain atypical patients admitted for other conditions who may be appropriate for care in an IRF. As a precaution to mitigate any unintended effects on access to care while we perform the analysis discussed in section II.D, we are proposing to lower the percentage of cases to 65 percent. We welcome the development and presentation of objective evidence that shows the type of patients most appropriately treated in the IRF setting, compared to other settings.

As reflected in both the present and now proposed policies, we do not believe it is necessary that an IRF must treat patients only with the medical conditions listed in proposed § 412.23(b)(2)(iii) to distinguish it from other inpatient settings as an inpatient hospital setting that is primarily engaged in furnishing intensive rehabilitation services. Patients may have a variety of medical conditions that require rehabilitation treatment and the rehabilitation treatment may be furnished by a variety of rehabilitation programs. However, while an IRF is one of the settings that is available to furnish rehabilitation, it may not be the most appropriate setting to treat a medical condition not listed in proposed § 412.23(b)(2)(iii).

Patients with the medical conditions not listed in proposed § 412.23(b)(2)(iii) have always had, and will continue to have, rehabilitation programs in IRFs and other settings available to them that we believe can furnish the type of treatment that is commensurate to the need they have for rehabilitation. While being a prudent purchaser of health care services for Medicare beneficiaries is an important factor, the most important determination is which rehabilitation program is the most appropriate in relation to the patient's medical condition and rehabilitation needs, that is, the rehabilitation services furnished by the most appropriate rehabilitation program.

Although the previous analysis of impairment group and diagnoses data from the IRF–PAI suggests that IRFs are treating a patient population with more than 35 percent of cases with medical conditions other than those specified in proposed § 412.23(b)(2)(iii), this does not in and of itself provide evidence that the IRF is the most appropriate rehabilitation treatment modality for these patients. We welcome evidence or studies demonstrating that patients with medical conditions not included in proposed § 412.23(b)(2)(iii) generally require intensive inpatient rehabilitation and have better outcomes compared to other settings.

Although there may have been "medical advances" in rehabilitation or at least changes in practice patterns since the medical conditions listed at proposed § 412.23(b)(2)(iii) were developed, it is not clear that there is evidence supporting a clinical basis for these changes. Instead, in some cases, patients may have been transferred inappropriately from the inpatient setting which may have played a major role in changing practice patterns and in deciding which patients are admitted to IRFs. We note that the general trend has been the migration of care from the acute inpatient hospital setting to

another treatment setting. However, we recognize that the conditions listed in proposed § 412.23(b)(2)(iii) describe groups of patients who typically require intensive inpatient rehabilitation. To allow IRFs to care for some atypical patients who require intensive inpatient rehabilitation and still maintain their status as an IRF, we would allow the percentage of cases in the conditions specified in proposed § 412.23(b)(2)(iii) to be lowered to 65 percent. As part of our ongoing analysis described in section II.D., we would both periodically monitor the literature and analyze the data obtained from assessments of beneficiaries to, determine whether it would be appropriate to modify any of the conditions that are listed in proposed § 412.23(b)(2)(iii).

Various commenters have suggested that we add cancer, cardiac, pulmonary, and pain to the list of conditions defining IRFs. We note that patients with cancer affecting the brain and spinal cord may be considered under the proposed clarification of the existing conditions to have non-traumatic brain or spinal cord injuries and can be counted in defining IRFs.

As has been commented on in the past, the result of adding cancer, cardiac, pulmonary, and pain conditions would be that almost all patients admitted to acute hospitals would qualify as being the types of patients that would be used to distinguish IRFs from acute care hospitals. Furthermore, we have seen no studies that demonstrate that patients from these categories have improved outcomes when cared for in IRFs as compared to other settings. We have reviewed studies that show that cardiac and pulmonary patients improve when treated in IRFs, but none of the studies provided evidence that the improvement required the unique characteristics of IRFs and compared the improvements of equivalent patients in other settings.

We continue to believe it is the total patient population that should determine whether a facility is classified as an IRF. This is the best indication that a facility (as a whole) is primarily engaged in furnishing intensive rehabilitation services. For a provider to be primarily engaged in furnishing intensive rehabilitation services implies that it is furnishing these services to its entire patient population. Therefore, we believe it is appropriate for Medicare to continue to use the entire IRF patient population as one of the criteria used to classify a facility as an IRF. This approach is part of CMS' existing policy that we plan to maintain.

In proposing 65 percent of an IRF's total patient population to determine compliance with proposed § 412.23(b)(2)(i) we still wanted to find methods of verification for the FIs that were not difficult operationally to automate. RAND's analysis of IRF compliance with existing requirements at § 412.23(b)(2) found that Medicare cases were highly predictive of the percentage of an IRF's total patient population with respect to the medical conditions specified in the regulation. We plan to instruct the FIs to initially utilize a presumptive eligibility test that uses Medicare data to assess compliance with proposed § 412.23(b)(2)(i). However, if an IRF appears to comply with proposed § 412.23(b)(2)(i) using only Medicare data, we may still consider other available information before making a final compliance determination. If the IRF does not comply with proposed § 412.23(b)(2)(i) based on the presumptive eligibility test that uses Medicare data, we would consider the IRF's total case-mix. In any case, we expect individual IRFs to notify their FI if the IRF believes that its Medicare population is not wholly representative of the total facility patient population. We believe that the compliance verification method described above offers Medicare adequate program protection and may reduce the burden on IRFs and the FIs related to enforcement of proposed § 412.23(b)(2)(i).

B. Change in the Medical Conditions

As noted in the May 16, 2003 proposed rule, we were concerned that some FIs inappropriately were using methods to verify compliance with the 75 percent rule. These inappropriate methods included incorrectly interpreting which patient diagnoses met the medical conditions listed in the 75 percent rule.

As in the present policies under the proposed IRF–PPS policies, Medicare will pay for the services an IRF furnishes to some patients who have a medical need for intensive inpatient rehabilitation services but do not have one of the medical conditions specified in proposed § 412.23(b)(2)(iii). The medical conditions specified in proposed § 412.23(b)(2)(iii) are used to determine whether a facility qualifies as an IRF and, thus, may be paid under the IRF PPS. However, the criteria for admission of any individual patient is based upon medical necessity; as a result, some patients with conditions listed in proposed § 412.23(b)(2)(iii) may still not meet the medical necessity criteria. Providers also have discretion over which patients are admitted, so we believe an IRF can manage its case-mix and, thus, ensure that its patient population during a cost reporting period would allow it to achieve compliance with proposed § 412.23(b)(2)(i).

We recognize, however, that one of the listed conditions in the existing regulation at § 412.23(b)(2), specifically polyarthritis, has been a source of confusion and is acknowledged by many not to represent any clearly defined clinical condition. We are proposing to remove this term from the list of 10 conditions and substitute instead 3 more clearly defined arthritis-related conditions, as specified above in the introduction to section II of this preamble, that comprise the range of diagnoses that the term "polyarthritis" was intended to encompass. This clarification was developed in part from information gathered from experts in rheumatology and rehabilitation as well as a review of the literature. We are proposing to adopt in § 412.23(b)(2)(iii) the other conditions currently listed in § 412.23(b)(2) because we believe these other conditions are the most appropriate conditions for treatment in an IRF. We are limiting the conditions to those that are sufficiently severe and in which intensive inpatient rehabilitation may be an appropriate modality of treatment. Although we acknowledge that "arthritis" may affect joints other than those specified (shoulders, elbows, hips and knees), such as those in the hands or spine, we do not believe these conditions require intensive rehabilitation care. Thus, we are limiting the focus to conditions that more commonly require intensive inpatient rehabilitation treatment. For this reason, conditions other than the types specified in this proposed rule are not included in the identified conditions to be listed in proposed § 412.23(b)(2)(iii). If a patient has a type of "arthritis" not included in the proposed conditions that we described earlier in this section then that patient would be included in the percent of cases that IRFs can admit which are not included in the proposed 65 percent of the proposed § 412.23(b)(2)(iii) conditions (assuming the care is medically necessary).

We acknowledge that the industry has interpreted polyarthritis to include hip and knee joint replacement cases and these should be included in the conditions counted in existing § 412.23(b)(2). Although some joint replacement cases are currently being treated in IRFs, we are not aware of any research that identifies the factors determining which patients are more appropriately treated in the intensive

inpatient rehabilitation setting provided in an IRF. Although it has been asserted that patients at risk for thrombosis, pressure ulcers, or infections should be treated in IRFs, all hip and knee joint replacement patients are at risk for those conditions. Likewise the presence of comorbidities such as diabetes and hypertension are common conditions that can generally be managed in the outpatient setting. We believe that there have been strong reimbursement incentives to send patients to IRFs and that these considerations have influenced the choice of setting for patients' care. We welcome data or studies that might provide evidence about whether certain patients had better outcomes as a result of care in IRFs.

We are also aware of proposals from the public that Medicare should count cases with lower functional status in RICs for joint replacement, cardiac, osteoarthritis, and pulmonary as cases that meet proposed § 412.23(b)(2)(iii). We are not proposing such a policy because the lower score of function on admission does not generally reflect a need for intensive inpatient rehabilitation services for patients with these medical conditions. Some patients may improve without rehabilitation, and others may not have the capability to improve even with rehabilitation.

We believe other conditions listed in proposed § 412.23(b)(2)(iii) also need to be clarified. The categories of brain and spinal cord injuries could appropriately be defined to include neoplasms of the brain, spinal cord, or meninges that result in substantial functional deficits as non-traumatic brain injuries and non-traumatic spinal cord injuries, since the course of rehabilitation for these conditions is very similar to the rehabilitation for other brain or spinal cord injuries. Although patients presenting with these conditions are currently paid under RIC 20, we believe that these patients can be counted towards the categories of cases listed in proposed § 412.23(b)(2)(iii) and invite comments of our interpretation.

Another category described in proposed § 412.23(b)(2)(iii) that requires clarification is major multiple trauma. Our contractors have noticed that some patients with relatively minor injuries at times are counted as having this condition. To clarify which patients should be counted, the IRF can determine if the acute care hospital service for a patient at the time of the initial injury was identified by diagnosis-related groups 484, 485, 486, or 487. We recognize that not all patients whose acute hospitalization was classified into DRG 484, 485, 486, or 487 will be admitted to an IRF immediately after the injury, because some may require a period of recuperation and healing before beginning the intensive inpatient rehabilitation care. We are soliciting comments regarding this methodology.

C. Proposal To Consider Using a Comorbidity To Verify Compliance

In this section of the proposed rule, we discuss the possible use of comorbidities to verify compliance with proposed § 412.23(b)(2)(i). Under the IRF PPS, we defined a comorbidity at § 412.602 as a specific patient condition that is secondary to the patient's principal diagnosis that is the primary reason for the inpatient rehabilitation stay.

Section II.C.1 below describes a proposed methodology in which cases other than those admitted with a principal diagnosis matching one or more of the 12 conditions specified in proposed § 412.23(b)(2)(iii) could be considered to satisfy the proposed 65 percent rule if certain additional criteria are met. Section II.C.2 below describes another alternative, in which a case that has a comorbidity that matches one of the conditions in proposed § 412.23(b)(2)(iii) could be considered to satisfy the proposed 65 percent rule only if the patient is admitted to an IRF for postoperative care immediately following a hip or knee replacement. We are soliciting comments on both of these proposed methodologies.

1. Proposed Methodology

Under proposed § 412.23(b)(2)(i), we are proposing that starting with the effective date of the final rule and subject to the proposed phase-out provision discussed in section II.D., a case with a principal diagnosis that does not match one of the proposed 12 conditions be considered as meeting proposed § 412.23(b)(2)(i) if *all* of the following criteria are met: (1) The patient is admitted for rehabilitation for a condition that is not one of the conditions listed in proposed § 412.23(b)(2)(iii); (2) The patient also has a comorbidity that falls in one of the conditions listed in proposed § 412.23(b)(2)(iii); and (3) The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities and which cannot be appropriately performed in another setting, such as inpatient hospital, skilled nursing facility, home health, or outpatient setting.

The following explanation provides guidance regarding classifying the proposed "arthritis-related" conditions as comorbidities which may be counted as complying with proposed § 412.23(b)(2)(i). If the comorbidity is active, polyarticular rheumatoid arthritis, psoriatic arthritis, seronegative arthropathies, or systemic vasculidities with joint replacement, the patient must have undergone an appropriate, aggressive, and sustained course of outpatient therapy immediately preceding the inpatient rehabilitation or have experienced a systemic disease activation immediately before admission in order for the admission to be included in cases complying with proposed § 412.23(b)(2)(i). If the comorbidity is severe or advanced osteoarthritis involving three or more joints, the patient must have undergone an appropriate, aggressive, and sustained course of outpatient therapy immediately preceding the inpatient rehabilitation in order for the admission to be included in cases complying with proposed § 412.23(b)(2)(i).

The following provides clinical examples of diagnoses which indicate when a comorbidity would and would not be considered in determining compliance with the proposed 65 percent rule. These examples are for illustrative purposes only and are not meant to be the only scenarios where comorbidities would or would not be considered in determining compliance with the proposed 65 percent rule. Furthermore, these examples are not intended to represent, define, or establish clinical criteria for benefit coverage determinations.

Examples of Clinical Scenarios That Are Likely To Be Included Under This Policy

(1) A patient who has severe arthritis in both shoulders and in his right knee has his left hip replaced with a non-cemented total hip prosthesis. Although before his joint replacement, he received an aggressive and sustained course of outpatient physical and occupational therapy, at the time of discharge from the acute care hospital, he still has considerable atrophy and weakness in his right quadriceps and hamstring muscles such that he is unable to support his entire weight on his right lower limb. He also has very restricted forward flexion in his right shoulder so that he is limited to 15 degrees of forward flexion. He has severe pain with weight-bearing through his upper limbs in both shoulders. Since after surgery, he can only have partial weight-bearing on his left lower limb, he requires

inpatient rehabilitation for daily occupational and physical therapy sessions to strengthen his right lower limb to bear his entire weight and to improve the function of both shoulders as well as therapy for his joint replacement.

(2) A patient undergoes emergency coronary artery bypass graft surgery for sudden onset of ischemic chest pain (unstable angina) unresponsive to medical management. During the operation she suffers a stroke and wakes up after surgery unable to speak, swallow, or move her right arm and leg. Over the next several days, she regains some partial movements in her leg and arm with minimal speech return. At the time of discharge, she still has significant weakness of the right arm and leg such that she is unable to walk without a walker and therapist by her side and she is unable to make coordinated movements with her right arm to feed and dress herself. She also cannot swallow liquids and solid food without choking spells. She, therefore, requires inpatient rehabilitation of at least 3 hours daily of physical therapy to strengthen her leg and arm, occupational therapy to improve right arm and hand coordination for activities of daily living (that is, eating, dressing, transfer, and bathing), and speech therapy to learn how to swallow her meals without choking.

Examples of Clinical Scenarios That Would Not Be Included Under This Policy

(1) A patient with a motor polyneuropathy who wears an ankle foot orthosis on the right lower limb elects to undergo a knee replacement due to severe osteoarthritis of the knee. Although the rehabilitation of the knee replacement may be complicated by the polyneuropathy, this patient would not be counted as satisfying the proposed change in § 412.23(b)(2)(i) because the comorbidity does not, by itself, require intensive inpatient rehabilitation.

(2) A patient had a stroke 5 years ago with residual weakness and lack of motor control in the left lower leg and that requires the use of a walking cane. She is involved in a car accident and undergoes surgery for a broken bone in her right arm (humerus) and a broken bone in her right ankle. At the time of discharge 2 days later, her dominant arm (right) is immobilized so she still has difficulty feeding herself and transferring from bed to chair. Also, she must learn to use a rolling walker because she cannot bear weight on her right leg and she can't reach the handle on her cane with her immobilized right arm. Although the rehabilitation of the right arm and right foot fracture may be complicated by the stroke, this patient would not be counted as satisfying the proposed change in § 412.23(b)(2)(i) because the comorbidity does not, by itself, require intensive inpatient rehabilitation. She has no caregiver (family or friend) support person at home so she is transferred to a skilled nursing facility where, over the next 5 days, she receives a daily physical therapy session to learn how to ambulate with a rolling walker and she receives a daily occupational therapy session to learn how to feed herself with her non-dominant left hand. She is then discharged home for follow-up with Outpatient Rehabilitation Therapy.

2. Proposed Alternative Methodology

As stated in the May 16, 2003 proposed rule (68 FR 26794), our analysis indicated the largest group of patients treated in IRFs that was not considered as matching one of the 10 conditions in the existing 75 percent rule is patients with major joint replacements, specifically knee and hip replacements. Thus, as an alternative to the proposed methodology above, we are also proposing an approach that would only apply to patients admitted to an IRF after hip or knee replacements. Under this alternative approach, only admissions to an IRF that are post-operative hip or knee joint replacements cases would be considered to count towards meeting the proposed 65 percent rule if the case also had a comorbidity that matches one or more of the 12 proposed conditions in proposed § 412.23(b)(2)(iii). Specifically, under this method we would count a case as meeting the proposed 65 percent rule if the patient matched all of the following criteria:

- Was postoperative following one or more hip or knee joint replacements that immediately preceded the transfer to an IRF.
- Had a condition at time of admission to an IRF that was complicated by an active comorbidity specified in proposed § 412.23(b)(2)(iii).
- Had an active comorbidity that resulted in a decline in the patient's function beyond the decline generally observed for other patients in that impairment category.
- Had an active comorbidity that substantially complicated the patient's rehabilitation to the point that it would improve only with the intensive, multidisciplinary rehabilitation treatment that is unique to inpatient rehabilitation facilities and that could not be performed in another setting (for example, skilled nursing facility, inpatient hospital, home health, or outpatient).

D. Ongoing Assessment of Implementing the Proposed Policies and Potential Scheduled Phase-Out of the Proposed Policies

In proposing these changes to the criteria for classifying hospitals as IRFs, our intent is to clarify the conditions typically requiring intensive inpatient rehabilitation therapy under the IRF PPS. These proposals do not represent an expansion of existing coverage criteria, but provide clear, clinically meaningful guidance on the conditions that are most appropriately treated in IRFs as distinguished from care furnished in other settings.

The policy changes proposed in this rule represent one of the next steps in an ongoing process since the May 16, 2003 proposed rule and the May 19, 2003 Town Hall meeting to identify potential policy changes to enhance the effectiveness of the IRF PPS. We are aware of the intricacies of implementing these changes to the IRF compliance criteria, both in terms of the time needed for providers to make any necessary adjustments to their operations and in the risk of unanticipated changes impacting providers, beneficiaries, and the Medicare program.

Comments received on the proposed change to the compliance percentage and on the proposed clinical criteria to determine compliance will be an important step in our planned ongoing assessment of the effect these proposed changes may have on—

- The IRF industry; and
- The Medicare beneficiaries who require rehabilitative care.

The final rule will reflect all relevant comments received and relevant data obtained through the comment period that may result in us adopting the proposed policies or adopting alternative policies.

As part of the next step in our ongoing assessment, during the 3-year period after the final rule is effective, we intend to closely review both claims and patient assessment data to examine trends in admissions and overall utilization in IRFs. These analyses will allow us to monitor and evaluate the effect the policies adopted in the final rule had on utilization and beneficiary access. Specifically, we will use these data to determine the effectiveness that the adopted final policies had in achieving the objectives stated in this proposed rule, and we will assess the need for any future policy development related to provider compliance. Also, we will review whether the adopted

final policies (including considering comorbidities in determining compliance if we adopt that policy) have led to significant shifts in the site of treatment of beneficiaries with particular conditions, and whether the adopted final policies have led to inadvertent and substantial expansions in either the number of IRFs or in aggregate utilization and expenditures.

In addition, we are encouraging rehabilitation professionals, the rehabilitation industry, researchers, academia, and other relevant sources to consider the 3-year period after the effective date of the final rule as an opportunity to conduct literature reviews, clinical studies, and other objective analyses so that we may be better informed about the situations in which patients require the intensive inpatient rehabilitation treatment available in an IRF compared to other settings. Furthermore, during this 3-year period, we plan to seek information and obtain data from rehabilitation experts, the rehabilitation industry, researchers, academia, and other relevant sources. The data we plan to obtain include clinical data, data from clinical outcomes analyses, and data from well-designed analytical studies specific to rehabilitative care. We believe that significant, objective data obtained from these sources would be informative as we deliberate whether changes to the clinical criteria and/or to the compliance percentage adopted in the final rule are justified.

However, no later than 3 years after the effective date of our final rule, in the absence of any significant, objective data as described above, we are proposing to change the classification criteria under proposed § 412.23(b)(2)(ii) as follows: In place of the proposed 65 percent compliance threshold discussed in section II.A., we would determine compliance by verifying that 75 percent of all inpatients have one of the 12 proposed conditions listed in proposed § 412.23(b)(2)(iii), and we would phase-out the use of the proposed comorbidity compliance policy discussed in section II.C. If, as we anticipate, the effective date of the final rule will apply to cost reporting periods that begin on or after January 1, 2004, this proposed change to the classification criteria, as noted below, would be effective for cost reporting periods beginning on or after January 1, 2007. Accordingly, the proposed changes specified in proposed § 412.23(b)(2)(ii) would occur automatically for cost reporting periods beginning on or after January 1, 2007 unless before that date we propose new criteria to determine compliance or validate the criteria as adopted in our final rule for identifying an IRF based on the data that CMS has obtained over the preceding 3 years including data from rehabilitation experts, the rehabilitation industry, researchers, academia, or other relevant sources.

As a future step in our ongoing assessment, we plan every 3 years after the initial 3 year assessment described above, to obtain objective updated clinical data from relevant sources and, if appropriate and justified, we may propose changes to the clinical criteria and/or the compliance percentage based on that updated data.

E. Proposed Change to the Time Period To Determine Compliance

Except for new IRFs, § 412.23(b)(2) for freestanding IRFs and § 412.30 for IRF converted/expanded units would require the use of the most recent 12-month cost reporting period to determine if the IRF was compliant with existing § 412.23(b)(2). In addition, existing § 412.23(i) and § 412.25(f) state that the classification of a hospital or unit, respectively, is effective for the hospital's or unit's entire cost reporting period and that any changes in the classification of a hospital or unit are made only at the start of a cost reporting period. We believe that the application of both of these regulations has resulted in much confusion as to the data used to determine compliance with existing § 412.23(b)(2). For example, if an IRF's cost reporting period begins January 1, 2005 and ends December 31, 2005, this period would represent the most recent 12-month cost reporting period used to determine if the classification of the IRF is correct for the next cost reporting period that begins on January 1, 2006 in accordance with existing § 412.23(b)(2) and § 412.23(i) or § 412.25(f). However, the process of reviewing the data, making a determination of compliance with existing § 412.23(b)(2), and notifying the IRF of its non-compliance (and de-certification as an IRF) may take at least 3 to 4 months. Therefore, in order to make a determination of compliance and implement any changes before the start of the January 1, 2006 cost reporting period, data for only the first 8 to 9 months from the most recent 12-month cost reporting period would be available.

In order to have the proposed regulation more precisely reflect the necessary operational procedures of our FIs, we are proposing to change § 412.23(b)(2), § 412.30(c), and § 412.30(d)(2)(ii) to specify that data from the most recent, consecutive, and appropriate 12-month period of time be used to determine compliance with the proposed policies set forth in this proposed rule. Accordingly, using the example above, the last 3 to 4 months of data from the cost reporting period ending December 31, 2004, and the first 8 to 9 months of data from the cost reporting period ending December 31, 2005, could be used (for a total of 12-months of data from the most recent, consecutive, and appropriate period of time) to determine compliance with the proposed policies set forth in this proposed rule. These time periods may be different depending on the workload of the FIs and CMS Regional Offices. We believe that this change will give FIs and CMS Regional Offices the flexibility to make a determination and give the IRF sufficient time to adjust to any Medicare de-certification action. We are not proposing to make a similar change to the regulatory policies for new freestanding IRFs or new IRF units, because they can provide written certification for the first full 12-month cost reporting period after Medicare certification that they intend to meet the requirements of proposed § 412.23(b)(2).

The intent of this proposed change is to ensure that the patient data used to determine compliance with the requirements of proposed § 412.23(b)(2) are from the most recent, consecutive, and appropriate 12-month period of time. However, we recognize that 12 months of patient data for the initial cost reporting periods affected by these proposed changes will be from a period that is before the effective date of the final rule. Therefore, it will be necessary to institute a transition period for those cost reporting periods where the most recent 12-month period of time includes admissions that occur before the effective date of the final rule. Accordingly, to ensure that admissions that occur before the effective date of the final rule are not counted in an IRF's compliance percentage, the FIs and affected IRFs will be given the specific procedures regarding what time period the FIs will use to verify compliance during the transition from the existing requirements at § 412.23(b)(2) to the proposed changes specified in proposed § 412.23(b)(2).

F. General FI Operational Instructions

We will take the necessary action to ensure that the proposed compliance policies are consistently enforced on IRFs across all FIs. We will issue instructions to the FIs and provide guidance to the clinical/medical FI personnel responsible for performing the compliance reviews to ensure that they use a method that consistently counts only cases with a diagnosis that both serves as the basis for the intensive rehabilitation services that the IRF

would furnish, and meets one of the medical conditions specified in proposed § 412.23(b)(2)(iii). In addition, as discussed in section II.A, we plan to instruct the FIs in the use of a presumptive eligibility test for verifying compliance with proposed § 412.23(b)(2)(i) that includes only Medicare cases determined to be "reasonable and necessary."

G. Conclusion

We believe that the changes we are proposing to § 412.23(b)(2) will help ensure the following:

- The incentives are appropriate for IRFs to admit patients that need and would benefit the most from intensive inpatient rehabilitation.
- The preservation of access to intensive inpatient rehabilitation services.
- IRFs provide distinct services and continue to be compensated with payment rates appropriate for their type of facility.
- The most prudent use of Medicare funds.
- More consistent implementation and enforcement by specifying more clearly what conditions are included in proposed § 412.23(b)(2).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Introduction

In this proposed rule, we are proposing changes to the 75 percent rule for IRFs. Specifically, we are proposing that 65 percent of all patients treated in an IRF meet one of the proposed specified conditions, as discussed earlier in this preamble. We are also proposing to count comorbidities under certain conditions, as specified in this preamble, towards meeting the proposed 65 percent rule.

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA), (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more).

In this proposed rule, we are proposing changes to the 75 percent rule as described above. We estimate the savings to the Medicare program would be greater than $100 million. Therefore, this proposed rule would be considered a major rule.

C. Regulatory Flexibility Act (RFA) and Impact on Small Hospitals

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, *see* the Small Business Administration's regulation, at 65 FR 69432, that set forth size standards for health care industries.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity. Accordingly, we have determined that this proposed rule would have a significant impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. This proposed rule would have a significant impact on the operations of small rural hospitals.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This proposed rule would not have a substantial effect on the governments mentioned, or on private sector costs.

E. Executive Order 13132

We examined this proposed rule in accordance with Executive Order 13132 and determined that it would not have a substantial impact on the rights, roles, or responsibilities of State, local, or tribal governments.

F. Overall Impact

For the reasons stated above, we have prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this proposed rule is a major rule and the proposed policies set forth in this proposed rule would have a significant impact on all IRFs (small entities and small rural hospitals).

G. Anticipated Effects of the Proposed Rule

One of the primary purposes of the regulatory impact analysis is to understand the effects policies would have on facilities. As we analyze the impacts of our proposed policies, we assess the extent to which these policies may unduly harm facilities. If there is evidence that we are unduly harming facilities, we make attempts to mitigate these effects, while ensuring that the proposed policies are fair and achieve the intended policy objectives. The intent of the policy objective of proposed § 412.23(b)(2) and of other policy criteria for IRFs is to ensure the distinctiveness of facilities providing intensive rehabilitative services in an inpatient setting. The distinctiveness of these facilities is what justifies paying them under a separate payment system

as opposed to under another payment system, such as the acute care IPPS, which may not adequately compensate these facilities for the intensive rehabilitative services they are to provide. We believe it is crucial to ensure that IRFs are indeed providing intensive rehabilitation so that we pay for these services appropriately under the IRF PPS. In addition, we believe it is imperative to identify conditions that would "typically require intensive inpatient rehabilitation" in IRFs because rehabilitation in general can be delivered in a variety of settings such as acute care hospitals, skilled nursing facilities, outpatient or home health.

This policy objective is not new. However, the manner in which the existing regulations have been implemented and enforced may not have enabled CMS to accomplish these objectives to the extent we hoped. The policies set forth in this proposed rule are intended to accomplish these same policy objectives, clarify interpretational issues that have led to inconsistent implementation, and improve the extent to which IRFs can admit patients that would need and benefit from intensive inpatient rehabilitative services. Therefore, although the impacts of the proposed policy changes shown below illustrate that IRFs may experience reduced Medicare payments from these proposed policies, we believe the impacts would show a greater reduction in Medicare payments to IRFs if the existing policies were more effectively enforced.

We discuss below the Medicare impact of this proposed rule on IRFs. We used the following data and assumptions to estimate the impacts of the proposed policies set forth in this preamble.

- As stated in section I.D. of this proposed rule, we used patient assessment data from January to August 2002 to estimate compliance with the 75 percent rule in the May 16, 2003 proposed rule. We are using the same patient assessment data to construct the impact analysis set forth in this proposed rule.
- We used data described in the report titled Case Mix Certification Rule for Inpatient Rehabilitation Facilities", published in May 2003, developed by the Rand Corporation. This report states, on page XIV, that 70 percent of all cases treated in IRFs are those of Medicare beneficiaries.
- In addition to Medicare patients, this proposed rule may have an effect on the 30 percent, or approximately 200,000, of the cases in IRFS that are non-Medicare. While there are numerous approaches a facility might take, and it is impossible to predict either the specific course of treatment or the financial impact, the facility could change both its Medicare and non-Medicare case mix in order to remain an IRF.
- We used regression results from page 25 of the Rand report to estimate that the percentage of total cases that meet the specified conditions for each IRF will be approximately 5 percent more than the percentage of Medicare cases that meet the specified conditions. However, other than an estimate of the size of the non-Medicare population in this proposed rule may affect, CMS does not have enough information to quantitatively estimate the impact to non-Medicare IRF cases, and encourages comments on this issue.
- 10 percent of the cases that did not meet the proposed criteria would meet the proposed criteria due to more accurate coding and removing the moratorium of the classification rule.
- 10 percent of the cases that did not meet the proposed criteria with the limited Medicare administrative data used in our analysis would meet the proposed criteria using more extensive medical record data.
- The diagnosis listed in Appendix A in the "Case Mix Certification Rule for Inpatient Rehabilitation Facilities" report, published in May 2003, developed by Rand identified cases that would meet the 75 percent rule. The report showed that a large number of cases with possible arthritis-related joint replacements did not meet the 75 percent rule. We believe that the proposed changes to the conditions related to arthritis in this proposed rule may increase the number of these cases that would count towards meeting the proposed 75 percent rule over those cases shown in the RAND report. However, it is difficult to determine the exact number of joint replacement cases that would meet the proposed criteria without extensive medical record data. Therefore, to estimate the impacts on the various classifications of IRFs shown in Chart 1, we chose the assumption that 35 percent of the joint replacement cases would meet the proposed clinical criteria as set forth in this proposed rule.
- We assume that a percentage of Medicare cases being admitted under the current practices would not be admitted to an IRF under the proposed criteria. We believe that these cases would be admitted or treated in extended hospital inpatient stays, outpatient departments, or other post acute care settings. We estimated that it would be equally possible that the cases not admitted to IRFs may be treated in inpatient hospitals, outpatient departments, or home health care settings. We found that approximately 80 percent of IRFs are units within a hospital complex and that approximately 60 percent of these hospital complexes include a skilled nursing facility. Accordingly, we estimated that skilled nursing facilities will have a higher possibility than other settings to absorb the cases not admitted to IRFs. Since long term care hospitals need to meet the average 25-day length of stay requirement and the average IRF length of stay is 14 Days, we estimated that long term care hospitals will absorb a smaller portion of the cases not admitted to IRFs.

Based on the above assumptions and the average payments for their respective settings, we have estimated that the average payment for these hospital inpatient, outpatient, and other post acute care settings to be approximately $7,000 per case. Thus, for Medicare patients, the difference between the IRF standardized payment per case ($12,525) and the estimated average per case amount for hospital inpatient, outpatient, and other post acute care settings ($7,000) results in a net savings to the Medicare program of approximately $5,525 per case.

Note that this result also depends on the assumption that all IRFs will continue to want to be classified as an IRF and admit those patients that will allow them to meet the proposed changes set forth in this proposed rule.

1. Impact Summary

Dependent on the range of assumptions related to joint replacement cases described above, we project a proposed net savings to the Medicare program between $42 million and $161 million. Specifically, the estimated net savings would be $161 million if we assume that 20 percent of joint replacement cases meet the proposed criteria, $98 million if 35 percent of joint replacement cases meet the proposed criteria, and $42 million if 60 percent of joint replacement cases meet the proposed criteria. This net savings to Medicare would be a net loss of Medicare payments to IRFs or facilities that contain both an IRF and an alternative treatment facility. Some alternative treatment facilities, however, would experience an increase in Medicare payments if they experience a net increase in cases.

2. Calculation of Impacts

To determine the estimated effects of implementing the policies in this proposed rule, we have developed Chart 1 to show the estimated impact on the

Medicare program among various classifications of IRFs. Chart 1 assumes the middle estimate that 35 percent of joint replacement cases meet the proposed criteria. The columns in Chart 1—Projected Impact of the Proposed Changes to the 75 percent Rule on the Medicare Program are defined as follows:

- The first column, Facility Classification, identifies the type of facility. Where data were not available to classify an IRF into a category, the IRF was identified as "missing" in the first column.
- The second column identifies the number of facilities for each classification type.
- The third column lists the estimated number of Medicare cases admitted to IRFs under the existing policies. We estimated the number of Medicare cases from 8 months worth of post-IRF PPS data (the available data at the time the analysis was done) to represent an annual number of Medicare cases.
- The fourth column, Ratio of Medicare Cases Not Admitted, represents an estimate of the percentage of Medicare cases that would no longer be treated in an IRF due to the proposed policies set forth in this proposed rule.
- The fifth column represents the Ratio of All Setting Cost/Savings to IRF Medicare Payments. To estimate this amount we divide the All Setting Cost/Saving in Millions in column six by the Current IRF Medicare Payments in Millions in column eight.
- The sixth column, All Setting Cost/Saving in Millions, indicates the savings impact to the Medicare program. To estimate the savings, we consider that some Medicare cases would possibly be treated in other settings and those settings would be paid accordingly. The following steps illustrate how we estimate this amount.
- Step 1—First we estimate the number of Medicare cases that may not be admitted to IRFs by multiplying the percentage in column four, Ratio of Medicare Cases Not Admitted, by the Total Medicare Cases reflected in column three.
- Step 2—We then take the number of cases calculated in the Step 1 and multiply these cases by $12,525 (the standardized FY 2004 payment amount) to determine the estimated Medicare impact to IRFs.
- Step 3—Then we estimate the amount of Medicare payments that these cases may generate in other settings. Specifically, we multiply $7,000 by the number of Medicare cases estimate in the Step 1 (the number of Medicare cases that may not be admitted to IRFs).
- Step 4—Then we subtract the total amount calculated in Step 3 by the total amount calculated in Step 2 in order to estimate the total savings to the Medicare program.
- The seventh column, IRF Medicare Payment Impact in Millions, shows the estimated Medicare impact specific to IRFs. We calculate this estimate by multiplying the percentage of Medicare cases that will not be admitted shown in column four by the Total Medicare Cases shown in Column three and determine the number of Medicare cases that will not be admitted to IRFs. We then take the total number of Medicare cases that will not be admitted to IRFs and multiply it by $12,525 to estimate column seven, IRF Medicare Payment Impact in Millions.
- The eighth column, Current IRF Medicare Payments in Millions, is the number of Medicare cases reflected in column three multiplied by $12,525.
- The ninth column, Projected IRF Medicare Payments in Millions, reflects the estimate of the total Medicare payments IRFs may receive as a result of the policies set forth in this proposed rule. This amount is calculated by subtracting the estimate of the IRF Medicare Payment Impact in Millions (column seven) from the estimate of the Current IRF Medicare Payments in Millions (column eight).

CHART 1.—PROJECTED IMPACT OF THE PROPOSED CHANGES TO THE 75 PERCENT RULE ON THE MEDICARE PROGRAM

Facility classification	Total number of IRF	Total Medicare cases	Ratio of Medicare cases not admitted	Ratio of all setting cost/saving to IRF Medicare payments	In millions			
					All setting cost/saving	IRF Medicare payment impact	Current IRF Medicare payments	Projected IRF Medicare payments
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Total	1,170	459,682	4%	−2%	−98	−223	5,758	5,534
Census:								
1: New England	38	20,133	6%	−3%	−7	−16	252	236
2: Middle Atlantic	170	87,639	7%	−3%	−35	−80	1,098	1,018
3: South Atlantic	143	75,806	2%	−1%	−10	−23	949	926
4: East North Central	220	74,361	3%	−1%	−13	−29	931	903
5: East South Central	66	35,764	3%	−1%	−6	−13	448	435
6: West North Central	99	26,672	2%	−1%	−2	−6	334	328
7: West South Central	235	87,206	4%	−2%	−17	−39	1,092	1,054
8: Mountain	78	24,522	5%	−2%	−7	−17	307	290
9: Pacific	121	27,577	0%	−0%	0	−1	345	344
Free Standing/Unit Facility:								
Free	214	165,593	5%	−2%	−49	−111	2,074	1,963
Unit	956	294,089	3%	−1%	−50	−113	3,683	3,571
Teaching Status:								
Missing	180	37,039	3%	−2%	−7	−16	464	448
Non-teaching	845	344,216	4%	−2%	−70	−158	4,311	4,154
Teaching	145	78,427	5%	−2%	−22	−50	982	933
DSH:								
<0.05	226	80,921	5%	−2%	−23	−51	1,014	962
>=0.2	145	45,549	2%	−1%	−4	−9	571	562
0.05–0.1	339	161,550	5%	−2%	−41	−92	2,023	1,932
0.1–0.2	313	143,173	3%	−1%	−26	−60	1,793	1,734
Missing	147	28,489	3%	−1%	−5	−12	357	345
Facility Control:								
Government	135	38,942	2%	−1%	−4	−9	488	478
Missing	76	10,264	4%	−2%	−2	−5	129	123
Proprietary	259	140,311	5%	−2%	−40	−90	1,757	1,667
Voluntary	700	270,165	3%	−2%	−52	−118	3,384	3,266

CHART 1.—PROJECTED IMPACT OF THE PROPOSED CHANGES TO THE 75 PERCENT RULE ON THE MEDICARE PROGRAM—Continued

Facility classification	Total number of IRF	Total Medicare cases	Ratio of Medicare cases not admitted	Ratio of all setting cost/saving to IRF Medicare payments	In millions			
					All setting cost/saving	IRF Medicare payment impact	Current IRF Medicare payments	Projected IRF Medicare payments
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Urban/Rural:								
Large Urban	493	209,489	4%	−2%	−48	−109	2,624	2,515
Missing	103	18,881	4%	−2%	−4	−10	236	227
Other Urban	404	188,494	4%	−2%	−42	−95	2,361	2,266
Rural	170	42,818	2%	−1%	−4	−9	536	527
Size:								
Large	201	172,951	5%	−2%	−43	−99	2,166	2,068
Medium	502	198,451	4%	−2%	−41	−93	2,486	2,393
Missing	158	31,400	3%	−1%	−5	−12	393	381
Small	309	56,880	3%	−1%	−9	−20	712	693
Size by Free Standing/Unit Facility:								
Free:								
Large	74	91,409	6%	−2%	−28	−64	1,145	1,081
Medium	71	53,640	6%	−3%	−17	−38	672	633
Missing	38	10,817	4%	−2%	−3	−6	135	130
Small	31	9,727	2%	−1%	−1	−2	122	120
Unit:								
Large	127	81,542	3%	−1%	−15	−34	1,021	987
Medium	431	144,811	3%	−1%	−24	−54	1,814	1,759
Missing	120	20,583	2%	−1%	−3	−6	258	252
Small	278	47,153	3%	−1%	−8	−18	591	573

Chart 1 breaks down the Medicare impacts into many categories that should serve to inform the public and interested parties of the different types of impacts of the changes in this proposed rule. As column seven in Chart 1 shows, IRFs are expected to experience a reduction in Medicare payments from the proposed rule of approximately $223 million, with a net savings to Medicare of approximately $98 million for all Medicare providers. Applying the different assumptions regarding qualifying joint replacement cases yields a Medicare impact range of $42 million (60 percent qualifying) to $161 million (20 percent qualifying).

For the purposes of the RFA analysis, the next few paragraphs discuss IRF impacts in more detail, and regulatory alternatives considered by CMS to explore the impact of different options on IRFs. There are distributional impacts among various IRFs due to existing levels of compliance. The expected Medicare savings is due to the percentage of patients admitted to IRFs that fall outside the identified conditions in relation to what IRFs would be paid in FY 2004 for all Medicare discharges assuming status quo (varying levels of compliance to the existing 75 percent rule). As we previously stated in this proposed rule, although the impacts of the proposed policy changes illustrate IRFs may experience a reduction in payments, we believe the impacts would show a greater reduction in payments to IRFs if the existing policies were more effectively enforced. Further, we believe this reduction in Medicare payments is appropriate given the existing policy objectives described above.

Because this rule is likely to have a significant impact on all IRFs based on the RFA guidelines, we will discuss the alternative changes to the 75 percent rule that we considered.

One option (Option A) would have been to consider all cases in rehabilitation impairment categories (RICs) 1–19 and 21 as cases that could be counted towards the 75 percent rule. This would leave only miscellaneous cases (RIC 20) as cases that would not be considered to satisfy the requirements in proposed § 412.23(b)(2). The result would have been that all existing IRFs would not only meet the standard, but that they would have almost no restrictions on the type of cases that they would admit. The intent of the policy specified in proposed § 412.23(b)(2) is to ensure that IRFs are unique compared to other hospitals in that they provide intensive rehabilitative services in an inpatient setting. The uniqueness of these facilities justifies paying them under a separate payment system rather than paying them with the same payment system for acute care inpatient PPS. Thus, we believe it is crucial to Medicare to maintain criteria ensuring that only facilities providing intensive rehabilitation are identified as IRFs. In addition, we believe that it is imperative to identify conditions that would typically require intensive inpatient rehabilitation in IRFs because rehabilitation, in general, can be delivered in a variety of other settings.

We have estimated that the average occupancy rate of all IRFs is approximately 70 percent. If we were to implement option A, we believe that IRFs with available capacity would increase their occupancy rate because, as stated above, IRFs would have almost no restrictions on the type of cases that they would admit. The following estimated effects of implementing option A on the Medicare program assumes that IRFs would increase their Medicare cases using the present ratio of 70 percent Medicare beneficiaries to total patients. Thus, we estimate that in the first year of implementing option A it would cause an increase in IRF Medicare payments, and would cost the Medicare program, an additional $2.7 billion dollars if occupancy increased to 100 percent, $1.9 billion if occupancy increased to 90 percent, and $1.2 billion if occupancy increased to 80 percent. This range of additional costs to the Medicare program represents up to 50 percent more than the current total IRF Medicare expenditures.

A variant of option A is option B which would add joint replacements, cardiac, pulmonary, pain, and cancer patients to the list of conditions, as discussed previously in this preamble in section II.A., which would also result in a significant impact on Medicare

expenditures and IRF Medicare payments. If we were to implement option B, using the same assumptions described in option A, we estimate it would have cost the Medicare program approximately $940 million dollars in the first year.

Another option (Option C) would be to retain the compliance percentage requirement at 75 percent, rather than lowering it to 65 percent, but recognize the comorbidities as proposed in section II.C. of this proposed rule. This option is similar to enforcement of the current policy and, thus, would further reduce Medicare payments to all IRFs over the policies proposed in this rule. Specifically, total estimated savings to Medicare from all IRFs would be increased from the range of $42 to $161 million (under the proposed policies) to the range of $154 to $357 million if we proposed 75 percent.

Another option (Option D) that we considered, similar to option C, was to allow a comorbidity to count only for hip and joint replacement patients as discussed previously in section II.C. of this proposed rule. If the compliance requirement were to be held at 75 percent along with this policy, the estimated reduction in Medicare payments for IRFs and savings to Medicare would be approximately the same as in option C.

We believe that the proposed changes to the clinical criteria are adequate to make the distinction of the intensive inpatient rehabilitation provided in IRFs from rehabilitation services provided in other settings, unlike the first alternative described above. In addition, while the proposed changes to the clinical criteria and the reduction in the compliance percentage to 65 percent do have a significant impact on Medicare payments to IRFs ($42 to $161 million), they are not as significant as the impact of the other alternatives described above. It is also important to note, as previously mentioned in section V.G., that approximately 80 percent of IRFs are units within a hospital complex and that approximately 60 percent of these hospital complexes include a skilled nursing facility. Thus, a majority of hospital complexes (including rural hospitals) that maintain an IRF unit may experience an increase in Medicare payments from the proposed changes in this proposed rule in other settings within the complex.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget (OMB).

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.23, paragraph (b)(2) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(2) Except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, a hospital must show that during its most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), it served an inpatient population that meets the criteria under paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) For cost reporting periods beginning on or after January 1, 2004 and before January 1, 2007, the hospital has served an inpatient population of whom at least 65 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts towards the required 65 percent if—

(A) The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified at paragraph (b)(2)(iii) of this section;

(B) The patient has a comorbidity that falls in one of the conditions specified at paragraph (b)(2)(iii) of this section; and

(C) The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under subpart P of this part and which cannot be appropriately performed in another care setting covered under this title.

(ii) For cost reporting periods beginning on or after January 1, 2007, the hospital has served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section.

(iii) List of conditions.

(A) Stroke.

(B) Spinal cord injury.

(C) Congenital deformity.

(D) Amputation.

(E) Major multiple trauma.

(F) Fracture of femur (hip fracture).

(G) Brain injury.

(H) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(I) Burns.

(J) Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies resulting in significant functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which result from a systemic disease activation immediately before admission, but have the potential to improve with more intensive rehabilitation.

(K) Systemic vasculidities with joint inflammation, resulting in significant functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which result from a systemic disease activation immediately before admission, but have the potential to improve with more intensive rehabilitation.

(L) Severe or advanced osteoarthritis (osteoarthrosis or degenerative joint disease) involving three or more major joints (elbow, shoulders, hips, or knees) with joint deformity and substantial loss of range of motion, atrophy, significant

functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission but have the potential to improve with more intensive rehabilitation. (A joint replaced by a prosthesis no longer is considered to have osteoarthritis, or other arthritis, even though this condition was the reason for the joint replacement.)

* * * * *

3. Section 412.30 is amended by—

A. Revising paragraph (c).

B. Revising paragraph (d)(2)(ii).

The revisions read as follows:

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

* * * * *

(c) *Converted units.* A hospital unit is considered a converted unit if it does not qualify as a new unit under paragraph (a) of this section. A converted unit must have treated, for the hospital's most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

(d) * * *

(2) * * *

(ii) A hospital may increase the size of its excluded rehabilitation unit through the conversion of existing bed capacity only if it shows that, for the hospital's most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), the beds have been used to treat an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 16, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 22, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–22658 Filed 9–2–03; 3:37 pm]

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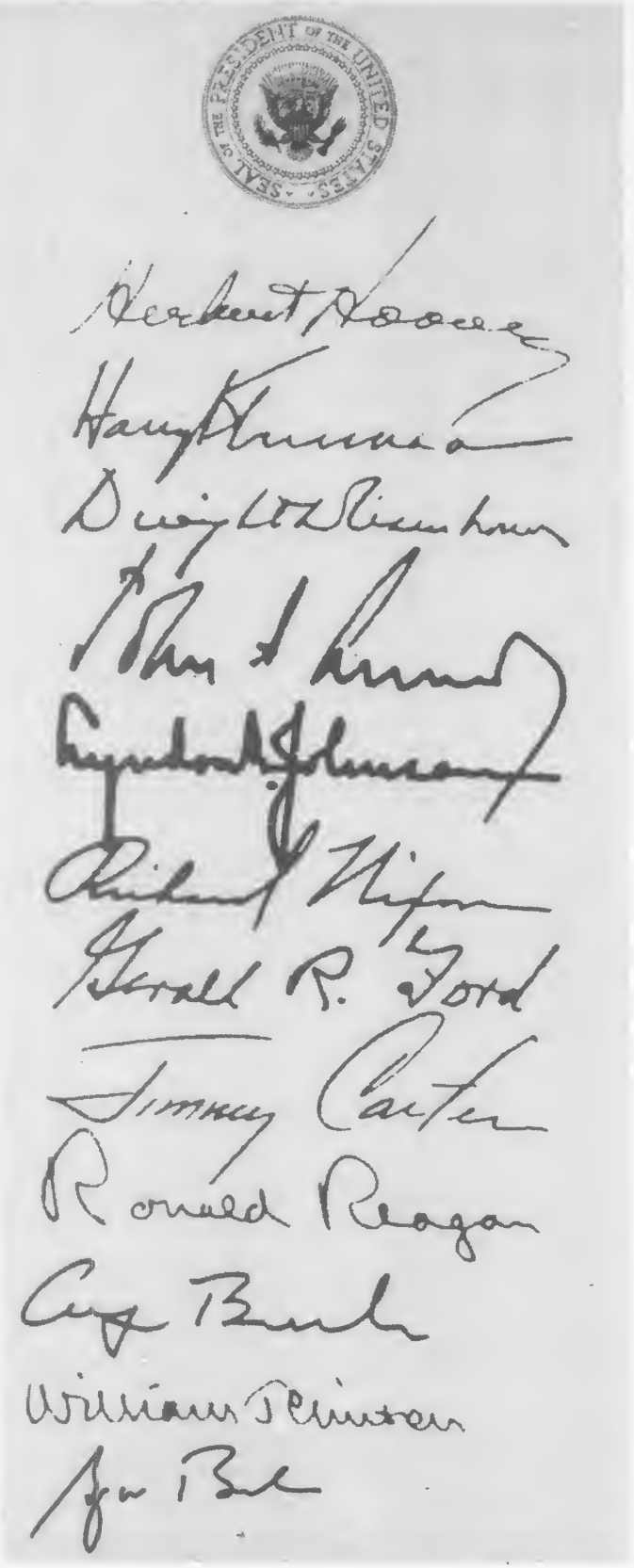

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