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Presidential Documents

Title 3—

The President

Proclamation 7734 of November 14, 2003

America Recycles Day, 2003

By the President of the United States of America

A Proclamation

To preserve America's majestic beauty, we must conserve our natural resources and practice responsible stewardship. On America Recycles Day, we reaffirm our commitment to conservation and recognize the increase in recycling in the last two decades.

Twenty-five years ago, only one community in the United States had a curbside recycling program. Today, more than 9,000 communities have curbside collection, and many others provide drop-off centers or cooperative collection facilities. Businesses and communities are boosting recycling collection efforts, and companies are using new technologies and methods to manufacture products more efficiently. Manufacturers, retailers, and governmental and non-governmental organizations are engaging in voluntary product stewardship partnerships to reduce waste. Industries are also discovering ways to reduce waste and cost, cut pollution and greenhouse gas emissions, and conserve energy and water.

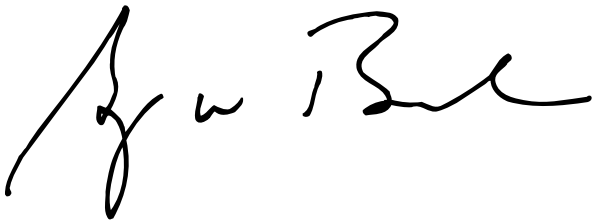
Many of the products used every day, including aluminum cans, appliances, office paper, cardboard boxes, furniture, and clothing contain recycled materials. We also recycle motor oil, tires, plastic, glass, batteries, and building materials, and we are developing new ways to recycle electronic products—the fastest growing portion of America's municipal waste.

On America Recycles Day, I encourage individuals, businesses, communities, tribes, and government to continue to work together as good stewards of America's resources. By using our resources wisely, we help build a stronger economy and a healthier future.

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 November 15, 2003, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, 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. 03–28952
Filed 11–17–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

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Tuesday, November 18, 2003

DEPARTMENT OF DEFENSE

Office of the Secretary

5 CFR Part 3601

RINS DoD 0790–AH74; OGE 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Defense

AGENCY: Department of Defense (DoD).

ACTION: Interim rule; amendments.

SUMMARY: The Department of Defense, with the concurrence of the Office of Government Ethics (OGE), amends the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense to reflect certain administrative changes as a result of DoD reorganizations, as well as to add a component.

EFFECTIVE DATE: These amendments are effective November 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Mason, Standards of Conduct Office, DoD; Telephone: 703–697–5305; Facsimile: 703–697–1640.

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 1993, with the concurrence and co-signature of OGE, DoD published an interim rule (part 3601 of title 5, CFR) establishing supplemental standards of ethical conduct for employees of DoD (58 FR 47622). The Armed Services Board of Contract Appeals (ASBCA) was not included on the list of separate DoD components at § 3601.102 at that time. On March 25, 1996, DoD added the ASBCA to paragraph 2–203.a. of DoD 5500.7–R, the Joint Ethics Regulation (JER). This amendatory rulemaking adds the ASBCA to the list of components. In the interim, the name of the Defense Investigative Service was changed to the Defense Security Service; the Defense Mapping Agency was reconstituted into the National Imagery and Mapping Agency; and the Defense Nuclear Agency was reorganized as the Defense Threat Reduction Agency. Therefore, DoD is updating the listing of these components in this amendatory rulemaking.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As Deputy Secretary of Defense, I have found good cause, pursuant to 5 U.S.C. 553(a)(2), (b) and (d), for waiving the notice of proposed rulemaking, opportunity for public comment, and 30-day delayed effective date as to these interim rule amendments. The notice, comment and delayed effective date are being waived because it is in the public interest that this amendatory rule, which concerns matters of agency organization, management, and personnel, become effective as soon as possible.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that these amendments to 5 CFR part 3601 do not constitute a significant regulatory action. The amendatory rule does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that these amendments to 5 CFR part 3601 do not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been determined that this amendatory rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule does not economically impact Federal Government relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that these amendments to 5 CFR part 3601 do not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Federalism (Executive Order 13132)

It has been certified that 5 CFR part 3601 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on: (1) The States; (2) The relationship between the National Government and the States; or (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 5 CFR Part 3601

Conflict of interests; Executive Branch Standards of Conduct; Government employees.

Dated: October 29, 2003.

Paul D. Wolfowitz,

Deputy Secretary of Defense, Department of Defense.

Approved: November 4, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Department of Defense, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 3601 as follows:

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

■ 1. The authority citation for 5 CFR part 3601 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR

2635.105, 2635.203(a), 2635.204(k), 2635.803.

■ 2. Section 3601.102 is amended by:

■ a. Redesignating paragraphs (a)(1) through (a)(15) as paragraphs (a)(2) through (a)(16).

■ b. Adding a new paragraph (a)(1); and

■ c. Revising newly redesignated paragraphs (a)(10), (a)(11), (a)(12), and (a)(13).

■ The addition and revisions read as follows:

§ 3601.102 Designation of separate agency components.

(a) * * *

(1) Armed Services Board of Contract Appeals;

* * * * *

(10) Defense Logistics Agency;

(11) Defense Security Service;

(12) Defense Threat Reduction Agency;

(13) National Imagery and Mapping Agency;

* * * * *

[FR Doc. 03–28690 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–150–AD; Amendment 39–13367; AD 2003–23–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, that currently requires repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary. This amendment adds new inspections, reduces the repetitive inspection intervals for certain airplanes, and mandates a terminating modification. The actions specified by this AD are intended to detect and correct discrepancies in the upper and lower skins of the fuselage lap joint and circumferential joint, which could result in sudden fracture and failure of a lap joint or circumferential joint and rapid decompression of the airplane fuselage. This action is intended to address the identified unsafe condition.

DATES: Effective December 23, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, as listed in the regulations, is approved by the Director of the Federal Register as of December 23, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 11, 2000 (65 FR 51750, August 25, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–17–04, amendment 39–11878 (65 FR 51750, August 25, 2000), which is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, was published in the **Federal Register** on July 21, 2003 (68 FR 43045). The action proposed to require repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary. The action proposed adding new inspections, reducing the repetitive inspection intervals for certain airplanes, and mandating a terminating modification.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

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 291 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 2000–17–04 take approximately 575 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 inspections on U.S. operators is estimated to be $2,242,500, or $37,375 per airplane.

The new inspections that are required by this new AD will take approximately 341 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 new inspections of this AD on U.S. operators is estimated to be $1,329,900, or $22,165 per airplane.

The terminating modification that is required by this new AD will take approximately 15,000 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 modification of this AD on U.S. operators is estimated to be $58,500,000, or $975,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not

have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11878 (65 FR 51750, August 25, 2000), and by adding a new airworthiness directive (AD), amendment 39–13367, to read as follows:

2003–23–03 Boeing: Amendment 39–13367. Docket 2002–NM–150–AD. Supersedes AD 2000–17–04, Amendment 39–11878.

Applicability: Model 737–100, –200, and –200C series airplanes; line numbers 1 through 291 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies in the upper and lower skins of the fuselage lap joint and circumferential joint, which could result in sudden fracture and failure of a lap joint or circumferential joint and rapid decompression of the airplane fuselage, accomplish the following:

Requirements of AD 2000–17–04, Amendment 39–11878

Initial and Repetitive Inspections

(a) Perform the applicable (initial and repetitive) inspections as specified in Figures 1 through 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, to detect discrepancies (*i.e.*, cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint. Perform the inspections at the applicable times specified in Tables 1 and 2 of section 1.E. 'Compliance' of the alert service bulletin, in accordance with the alert service bulletin; except that where Table 1 specifies a compliance time of ''airplane flight cycles at time of service bulletin release,'' this AD requires a compliance time of ''airplane flight cycles as of September 11, 2000 (the effective date of AD 2000–17–04, amendment 39–11878).''

Repair

(b) Prior to further flight: Repair any discrepancies detected during any inspection required by paragraph (a) of this AD in accordance with Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000; repair any discrepancies detected during any inspection required by paragraph (c) of this AD in accordance with Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002. If any discrepancy is detected and the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with 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.

New Requirements of This AD

Compliance Times

(c) Where the compliance times in Section 1.E. 'Compliance' of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, specify a compliance time interval calculated ''from release of service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.'' In addition, where the compliance time for the initial and repetitive inspections in Tables 1 through 3 of section 1.E. 'Compliance' of the service bulletin specifies ''airplane flight cycles at time of service bulletin release,'' this AD requires a compliance time of ''airplane flight cycles as of the effective date of this AD.''

Initial and Repetitive Inspections

(d) Except as provided by paragraph (e) of this AD: Perform the applicable (initial and repetitive) inspections as specified in Figures 1 through 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, to detect discrepancies (*i.e.*, cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint and circumferential joint. Perform the inspections at the applicable times specified in Tables 1 and 2 of section 1.E. ''Compliance'' of the alert service bulletin, in accordance with the alert service bulletin, until accomplishment of paragraph (f) of this AD. Accomplishment of this paragraph terminates the inspections required by paragraph (a) of this AD.

(e) For airplanes that have accumulated more than 70,000 total flight cycles as of the effective date of this AD: Do the first repeat inspection at the earlier of the times specified in paragraph (e)(1) or (e)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

(1) Within 2,000 flight cycles after the last inspection done per AD 2000–17–04.

(2) Within 1,000 flight cycles after the last inspection done per AD 2000–17–04, or within 500 flight cycles after the effective date of this AD, whichever is later.

Terminating Modification

(f) Perform the modification of the skin of all fuselage lap joints between body stations 259.5 and 1016 per part IV of the Work Instructions of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002; at the applicable times specified in Table 3 of section 1.E. ''Compliance'' of the alert service bulletin; in accordance with the alert service bulletin. Accomplishment of this paragraph terminates the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOC) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(h) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000; and Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, was approved previously by the Director of the Federal Register as of September 11, 2000 (65 FR 51750, August 25, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on December 23, 2003.

Issues in Renton, Washington, on November 7, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28492 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–95–AD; Amendment 39–13368; AD 2003–23–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires modification of the number 3 left and right emergency exit doors. This amendment requires a new, improved modification of the number 3 left and right emergency exit doors, which terminates the requirements in the existing AD. The actions specified by this AD are intended to prevent the number 3 emergency exit doors from jamming, which could impede the safe evacuation of passengers and crew during an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective December 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, 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) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–01–05, amendment 39–6850 (55 FR 52967, December 26, 1990), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on June 2, 2003 (68 FR 32691). The action proposed to require a new, improved modification of the number 3 left and right emergency exit doors, which would terminate the requirements in the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed Rule

One commenter states that it fully supports the proposed rule.

Request To Withdraw Proposed Rule

Another commenter states that a reliability review of the number 3 emergency exit doors on its Model 757 fleet revealed zero events of difficulty in operating the number 3 doors. The commenter further states that it has already accomplished a terminating action for AD 91–01–05. For these reasons, the commenter asserts that additional modification to the number 3 emergency exit doors is not warranted on its Model 757–200 fleet.

From these statements, we infer that the commenter is requesting that we withdraw the proposed rule. We do not agree. Since the issuance of AD 91–01–05, we have received reports from several operators that had difficulty opening the number 3 emergency exit doors or had them become completely jammed during opening. These events occurred even though the number 3 emergency exit doors on these airplanes had been modified per the requirements of AD 91–01–05. Therefore, we find it necessary to mandate a design change that will prevent the number 3 emergency exit doors from being difficult to open or from becoming completely jammed. No change to the final rule is made.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the 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. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

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 398 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

The modification that is currently required by AD 91–01–05 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $95 per airplane. Based on these figures, the cost impact of the currently required modification is estimated to be $290 per airplane.

The new modification that is required in this AD will take approximately 6 work hours per airplane (3 work hours per door) to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $8,000 per kit, per airplane. Based on these figures, the cost impact of the new modification on U.S. operators is estimated to be $981,630, or $8,390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–6850 (55 FR 52967, December 26, 1990), and by adding a new airworthiness directive (AD), to read as follows:

2003–23–04 Boeing: Amendment 39–13368. Docket 2002–NM–95–AD. Supersedes AD 91–01–05, Amendment 39–6850.

Applicability: Model 757–200 series airplanes having a four-door configuration, as listed in Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the number 3 emergency exit doors from jamming, which could impede the safe evacuation of passengers and crew during an emergency, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Modify the number 3 left and right emergency exit doors per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 2002. The modification involves replacing the header panel assemblies of the number 3 left and right emergency exit doors (includes replacing the double hinged panels above the doors with new single panels), trimming the top portion of the door liner seal, and installing a new seal, retainer, and support angle. Accomplishment of the modification required by this paragraph terminates the requirements of AD 91–01–05, amendment 39–6850.

Credit for Actions Done per Previous Issue of Service Bulletin

(b) Modifications done before the effective date of this AD per Boeing Special Attention Service Bulletin 757–25–0237 dated October 18, 2001; or Revision 1, dated January 24, 2002; are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done per Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 23, 2003.

Issued in Renton, Washington, on November 7, 2003.

Kalene C. Yanamura, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28493 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30395; Amdt. No. 3082]

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 November 18, 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 November 18, 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: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 7, 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 December 25, 2003*

Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Orig, Cancelled
Longmont, CO, Vance Brand, VOR/DME–A, Amdt 1
Longmont, CO, Vance Brand, RNAV (GPS)–B, Orig
Longmont, CO, Vance Brand, RNAV (GPS) RWY 29, Orig
Longmont, CO, Vance Brand, GPS RWY 29, Orig, Cancelled
Americus, GA, Souther Field, ILS OR LOC/NDB RWY 23, Orig
Americus, GA, Souther Field, LOC RWY 23, Amdt 3, Cancelled
Wabash, IN, Wabash Muni, RNAV (GPS) RWY 9, Orig
Wabash, IN, Wabash Muni, RNAV (GPS) RWY 27, Orig
Wabash, IN, Wabash Muni, GPS RWY 27, Orig, Cancelled
Vineyard Haven, MA, Marthas Vineyard, VOR RWY 6, Amdt 1
Vineyard Haven, MA, Marthas Vineyard, VOR RWY 24, Amdt 1
Vineyard Haven, MA, Marthas Vineyard, ILS OR LOC RWY 24, Amdt 1
Vineyard Haven, MA, Marthas Vineyard, RNAV (GPS) RWY 24, Orig
Alma, MI, Gratiot Community, NDB RWY 9, Amdt 7
Alma, MI, Gratiot Community, SDF RWY 9, Amdt 8
Alma, MI, Gratiot Community, VOR/DME RWY 18, Amdt 1
Alma, MI, Gratiot Community, VOR/DME RNAV OR GPS RWY 27, Amdt 7, Cancelled
Alma, MI, Gratiot Community, RNAV (GPS) RWY 9, Orig
Alma, MI, Gratiot Community, RNAV (GPS) RWY 18, Orig

Alma, MI, Gratiot Community, RNAV (GPS) RWY 27, Orig
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 2, Orig
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 15, Orig
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 20, Orig
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 28, Orig
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 33, Orig
Santa Fe, NM, Santa Fe Muni, GPS RWY 2, Orig, Cancelled
Santa Fe, NM, Santa Fe Muni, GPS RWY 28, Orig-D, Cancelled
Santa Fe, NM, Santa Fe Muni, GPS RWY 33, Orig, Cancelled
Newark, OH, Newark-Heath, SDF RWY 9, Amdt 5A, Cancelled
Corry, PA, Corry-Lawrence, RNAV (GPS) RWY 14, Orig
Corry, PA, Corry-Lawrence, RNAV (GPS) RWY 32, Orig
Corry, PA, Corry-Lawrence, NDB RWY 14, Amdt 5
Corry, PA, Corry-Lawrence, VOR RWY 32, Amdt 5
Harlingen, TX, Valley Intl, VOR/DME RWY 35L, Orig-A
San Antonio, TX, San Antonio Intl, ILS OR LOC RWY 3, Amdt 20

[FR Doc. 03–28674 Filed 11–17–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30396; Amdt. No. 3083]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 18, 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 November 18, 2003.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 7, 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:

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

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

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
10/16/03	DC	Washington	Ronald Reagan Washington National	3/0019	VOR/DME or GPS RWY 15 Amdt 1B. This replaces FDC 3/9310 dated 9/24/03 in TL03–23.

[FR Doc. 03–28675 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 031016260–3260–01; I.D. 091603A]

15 CFR Part 902

RIN 0648–AR71

NOAA Information Collection Requirements; Update and Correction

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

ACTION: Final rule; technical amendment; republication.

SUMMARY: On October 28, 2003, NMFS published a final rule, technical amendment, to update and correct Office of Management and Budget (OMB) control numbers and related regulatory citations for NMFS information collection requirements. The published document contained only a portion of the table contained in the regulatory text, which was updated and corrected in this final rule. On November 4, 2003, the Office of the Federal Register issued a correction to the regulation by publishing the remaining portions of the table. However, to ensure that the public is aware of the modifications made to the Code of Federal Regulations through this final rule, NMFS is republishing the final rule, technical amendment in its entirety. NMFS is also including editorial corrections to the final rule, technical amendment in this republication. Therefore, this final rule, technical amendment updates and corrects the NOAA inventory of control numbers so that the inventory reflects the valid OMB control number with its associated regulatory citation for each NMFS information collection requirement. Under the Paperwork Reduction Act (PRA), agencies are required to display a current control number assigned by the Director of OMB for each agency information requirement. The intent of this action is to update and correct the NOAA inventory of control numbers so that the inventory reflects the valid OMB control number with its associated regulatory citation for each NMFS information collection requirement.

DATES: This regulation is effective on October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, Fishery Management Specialist, (301) 713–2341.

SUPPLEMENTARY INFORMATION: On October 28, 2003 (68 FR 61339), NMFS published a final rule; technical amendment in the Federal Register updating and correcting portions of 15 CFR Part 902. However, only a portion of the table contained in the regulation was published in the October 28th **Federal Register** document. On November 4, 2003 (68 FR 62501), the Office of the Federal Register published the remaining portions of the table in a correction notification. However, because this final rule, technical amendment was published in two documents, NMFS is reprinting the text of the final rule in its entirety to avoid any confusion and to ensure the public is aware of the regulatory changes to 15 CFR Part 902.

Pursuant to the Paperwork Reduction Act, Part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. Portions of 15 CFR 902.1(b) reflect expired or incorrect OMB control numbers. In some cases, the regulations cited have previously been removed from the CFR and, therefore, there are no approved OMB control numbers for those regulations. In addition, the OMB control numbers for some requirements have changed but the obsolete numbers are still reflected in the inventory. Also, when new collection-of-information requirements were previously approved, the final rule implementing the collection-of-information requirement did not update 15 CFR Part 902.

Therefore, through this final rule, technical amendment, the inventory of OMB approved control numbers is corrected and updated to reflect the currently valid control numbers. All of

the collection-of-information requirements displayed in § 902.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of title 50. Therefore, this final rule, technical amendment does not involve any new reporting or recordkeeping requirements.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the AA waives prior notice and opportunity for public comment because this action is a rule of agency organization, procedure or practice. Because this rule makes only minor, non-substantive changes and does not change operating practices in any fishery, it is unnecessary to provide for prior notice and opportunity for public comment. Because this final rule, technical amendment does not constitute a substantive rule, pursuant to 5 U.S.C. 553(d), this final rule is not subject to the 30–day delay in effectiveness. This final rule, technical amendment makes no substantive changes to existing regulations, but rather updates OMB control numbers associated with NMFS information collections, all of which OMB has previously approved during implementation of regulations appearing in the individual parts of title 50 of the Code of Federal Regulations.

Because prior notice and opportunity for public comment are not required pursuant to 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 inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule is exempt from review under Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: November 10, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR chapter IX is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. removing the following CFR parts or sections in the left hand column and their related current OMB control number(s) in the corresponding positions in the right hand column, for: 50 CFR 216.24(d), 216.24(e), 216.114, 216.155, 222.201(c) and (d), 222.202, 222.204 (f) and (g), 229.7, 663.6, 679.4, 679.4(b)(5)(vi), 679.4(k)(6)(iii), 679.4(k)(6)(iv), 679.4(k)(7)(iii), 679.5, 679.5(n)(2)(iii), 679.24, 679.28, 679.28(f)(3)(i), 679.28(f)(3)(ii), 679.28(f)(3)(iii), 679.28(f)(4), (f)(5), and (f)(6), and 679.32;

■ b. Adding the CFR part or sections in numerical order in the left hand column and its related OMB control number(s) in the corresponding right hand column in numerical order: 50 CFR 216.26, 223.203(b), 229.4, 260.15, 260.36, 260.37, 260.96, 260.97, 300.107, 600.745, 679.4(b), (f), (h), and (i), 679.4(d) and (e), 679.4(k), 679.4(l), 679.5(a), 679.5(b), (c), (d), (g), (h), (i), (j), (k), and (m), 679.5(e), (f), and (o), 679.5(l)(1), (l)(2), (l)(3), (l)(4), and (l)(5), 679.5(l)(7), 679.5(n), 679.5(p), 679.24(a), 679.24(e), 679.28(b) and (d), 679.32(c), 679.32(d), 679.32(f), 679.45, 679.61(c) and (f), 679.61(d) and (e), 679.62(b)(3) and (c) and 679.63(a)(2); and,

■ c. Revising the control number entries in the right hand column for the following parts or section identified in the left hand column: 50 CFR 229.5, 300.34, 300.35, 300.108(a), 300.108(c), 300.125, 622.4, 622.18, 635.5(c), 640.6, 648.8, 648.9, 648.10, 648.58, 648.80, 648.84, 654.6, 660.16, 660.24, 660.25, 660.305, 660.322, 679.4(g), 679.40, 679.43, and 679.50 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
216.26	–0084
* * * *	*
223.203(b)	–0399
* * * *	*
229.4	–0293
229.5	–0292
* * * *	*
260.15	–0266
260.36	–0266
260.37	–0266
260.96	–0266
260.97	–0266
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300.34	–0218
300.35	–0361
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300.107	–0194
300.108(a)	–0368
300.108(c)	–0367
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300.125	–0358
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600.745	–0309
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622.4	–0205
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622.18	–0205
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635.5(c)	–0328
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640.6	–0358 and –0359
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648.8	–0350
648.9	–0202 and –0404
648.10	–0202
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648.58	–0202 and –0416
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648.80	–0202 and –0422
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648.84	–0202 and –0351
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654.6	–0358 and –0359
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660.16	–0361

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
660.24	–0360
660.25	–0441
* * * *	*
660.305	–0355
660.322	–0352
* * * *	*
679.4(b),(f),(h) and (i)	–0206
679.4(d) and (e)	–0272
679.4(g) and (k)	–0334
679.4(l)	–0393
679.5(a)	–0213, –0269, –0272, and –0401
679.5(b),(c),(d),(g),(h),(i),(j),(k) and (m)	–0213
679.5(e),(f), and (o)	–0401
679.5(l)(1),(l)(2),(l)(3),(l)(4) and (l)(5)	–0272
679.5(l)(7)	–0398
679.5(n)	–0269
679.5(p)	–0428
* * * *	*
679.24(a)	–0353
679.24(e)	–0474
* * * *	*
679.28(b) and (d)	–0330
* * * *	*
679.32(c)	–0269 and –0330
679.32(d)	–0269
679.32(f)	–0269 and –0272
679.40	–0272
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679.43	–0272 and –0398
679.45	–0398
679.50	–0318
* * * *	*
679.61(c) and (f)	–0401
679.61(d) and (e)	–0393
679.62(b)(3) and (c)	–0401
679.63(a)(2)	–0330
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[FR Doc. 03–28781 Filed 11–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–214]

RIN 1625–AA11

Regulated Navigation Area; Des Plaines River, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising the effective period for a regulated navigation area (RNA) on the Des Plaines River in Joliet, Illinois. This action is necessary to ensure vessel and public safety due to several serious allisions with this bridge structure. This rule is intended to restrict vessel traffic in a portion of the Des Plaines River near Joliet, Illinois.

DATES: Effective November 15, 2003. Section 165.T09–214 expires March 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [CGD09–02–214] and are available for inspection or copying at Coast Guard Marine Safety Office (MSO) Chicago, 215 W. 83rd St., Suite D, Burr Ridge, Illinois 60521 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 21, 2003, we published a temporary final rule (TFR) entitled ''Regulated Navigation Area; Des Plaines River, Joliet, Illinois'' in the **Federal Register** (68 FR 27727). We received 25 letters commenting on that TFR which we have summarized in the *Discussion of Comments* section. We plan on addressing those comments in the notice of proposed rulemaking (NPRM). The only adjustment being made to the temporary § 165.T09–214 created by the May 21, 2003 TFR is the effective period. No public meeting was requested and none was held.

We are extending the effective period of the temporary final rule so that we can complete rulemaking CGD09–03–285 Regulated Navigation Area, Joliet, Illinois, to permanently establish restrictions on southbound tows transiting the Des Plaines River through Joliet, Illinois. Past allisions with the Jefferson Street Bridge highlight safety concerns when certain tows transiting this area. Extending the effective period until March 1, 2004 should provide sufficient time to complete the rulemaking. Since the temporary rule was to expire November 15, 2003, we are reinstating and revising it effective November 15, 2003.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated the May 21, 2003 TFR, we were still ascertaining what steps were required in response to an allision just prior to that date. We received numerous comments in response to our temporary final rule as to what future actions were desirable.

Since public response to this temporary final rule was anticipated, we are currently finalizing an NPRM to be published shortly. That rulemaking will follow normal notice and comment procedures, and a final rule should be published before March 1, 2004.

Continuing the temporary final rule in effect while permanent rulemaking is in progress will help ensure the safety of this bridge structure. On May 2, 2003, a tow allided with the pier of the Jefferson Street Bridge which resulted in substantial damage to the bridge structure. As a result, it is estimated that the bridge will be inoperable for 4 to 6 months while repairs are made. The Captain of the Port Chicago believes that immediate action is necessary to help prevent any future allisions with the pier. Further, additional allisions might result in total structural failure, closure of the river for a period of time as a result of an allision, and the possible loss of life as a result of another allision. Prior to this accident, another tow had allided with the bridge, which resulted in a closure of over 6 months. These allisions are not only dangerous to the safety of navigation, but also to persons who are on the bridge as tows transit underneath. Therefore, under 5 U.S.C. 553(b)(B) and (d)(3) good cause exists for why an NPRM is not required and why this rule will be made effective fewer than 30 days after publication in the **Federal Register**.

Background and Purpose

On May 2, 2003, a southbound tow allided with the pier of the Jefferson Street bridge. This allision resulted in significant structural damage to the bridge pier. Southbound tows with a 3 by 5 configuration, transiting under the Cass Street Bridge and then the Jefferson Street Bridge, only have 100 feet of

horizontal maneuvering room. In addition, the Des Plaines River regularly has significant current in this area.

In order to prevent future allisions, an RNA was established from the Ruby Street Bridge to the McDonough Street Bridge in which southbound tows in a 3 by 5 configuration must use an assist tug. This RNA is being established until an adequate protection cell is constructed around the bridge pier.

Discussion of Rule

Southbound tows greater than 89 feet in overall width and more than 800 feet in length must use an assist tug when transiting through the RNA. This RNA encompasses the Des Plaines River from mile 288.7 (the Ruby Street Bridge), to mile 287.3 (the McDonough Street Bridge). Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative. His designated representative is the Captain of the Port Chicago.

Discussion of Comments

As of September 1, 2003, we received 25 written comments on the temporary final rule. All comments received generally focused on: (1) Length of Tows; (2) Width of Tows; (3) Protection Cells; (4) Tug Assist; (5) Economic Impact; and (6) Direction of Regulated Navigation Area.

Length of Tows. Several comments were received with the concern of length of tows. Three comments stated that the wording was confusing. Eight comments received wanted the length of tows shorter than described and 1 comment received stated that the length is too restrictive.

Width of Tows. We received eight comments stating that the width of tows should be reduced smaller and one comment stating that the width requirement is too restrictive.

Protection Cells. Nine comments were received stating that protection cells should be constructed along the Des Plaines River in the Joliet Harbor area.

Tug Assist. Eight comments were received stating that tug assists were not needed due to the channel being too narrow and that it would be too expensive. Three comments were in favor of tug assists

Economic Impact. Economic Impact is divided into the impact felt by the maritime industry as well as the business district of Joliet Harbor. Eight comments were received by the maritime industry stating that the regulated navigation area will cause a loss in business due to the restrictions placed on number of barges allowed through Joliet Harbor. Ten comments were received by the business' in Joliet stating that the regulated navigation area will protect the bridges and will allow uninterrupted flow of traffic from a bridge being down due to casualties caused by the maritime industry.

Direction of Regulated Navigation Area. We received 8 comments stating that the regulation should include northbound tows as well as southbound. Five comments were received stating the restriction should only be required for southbound tows.

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. The operational reporting requirements of the RNA are minimal and necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge cargo loading operations or transits. Additionally, this rule is temporary in nature and the Coast Guard may issue an NPRM as it considers whether to make this rule permanent. The minimal hardships that may be experienced by persons or vessels are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The operators of southbound tows, in a 3 by 5 configuration, intending to transit through the RNA. This RNA will not have a significant economic impact on a substantial number of small entities because this rule will only remain in effect until a protection cell can be erected or until other recommendations are provided which reduce the risk of allisions with the Jefferson Street Bridge.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year.

Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. 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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Reinstate and revise temporary § 165.T09–214 to read as follows:

§ 165.T09–214 Regulated Navigation Area; Des Plaines River, Joliet, Illinois

(a) *Regulated Navigation Area.* The following waters are a Regulated Navigation Area (RNA): All portions of the Des Plaines River between mile 287.3 (McDonough St. Bridge) to mile 288.7 (Ruby Street Bridge).

(b) *Applicability.* This section applies to operators of all southbound tows transiting beneath the Jefferson Street Bridge (mile 287.9), Joliet, Illinois, with barge configurations of over 89 feet in overall width and more than 800 feet in length.

(c) *Effective dates.* This section is effective from 8 a.m., May 11, 2003, until March 1, 2004.

(d) *Regulation.* (1) All southbound tows to which this section applies must use an assist tug when transiting through the RNA.

(2) The general regulations contained in 33 CFR 165.13 apply to this section.

(3) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. Designated representatives include the Captain of the Port Chicago.

Dated: November 10, 2003.

Ronald F. Silva,

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

[FR Doc. 03–28801 Filed 11–13–03; 3:54 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 111303B]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: Quota transfer; fishery closure.

SUMMARY: NMFS has determined that effective 11:30 p.m. local time on November 17, 2003, the Atlantic bluefin tuna (BFT) Angling category fishery will close in both the northern and southern management areas. NMFS also has determined that a BFT quota transfer from the General category to the Reserve category in the amount of 150 metric tons (mt) is warranted. These actions are being taken to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), to meet domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to prevent overharvest of the 2003 Angling category quota.

DATES: Effective 11:30 p.m. local time November 17, 2003 through May 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories, and together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT Quota and General

category effort controls were published on October 2, 2003 (68 FR 56783).

Angling Category Closure

The final initial 2003 BFT quota specifications were prepared using the ICCAT recommended 2003 baseline BFT quota adjusted by the results of the previous fishing year. During the development of the 2003 BFT quota specifications, it appeared that the Angling category had not harvested the available quota in 2002, thus the remaining quota was carried over to the 2003 Angling category. These initial landing estimates were calculated using an Automated Landing Reporting System (ALRS), in conjunction with the state landing tag data from Maryland and North Carolina. However, since the publication of the final initial 2003 BFT quota specifications, revised preliminary estimates of 2002 fishing year Angling category landings have been made available based on data collected through the Large Pelagics Survey (LPS). The LPS is the standard mechanism used for end of the year Angling category landing estimates, as well as the established method used to report landings data to ICCAT. These preliminary LPS estimates indicate that the Angling category fishery overharvested its allocated quota in the 2002 fishing year. The ICCAT Recommendation regarding the harvest of BFT requires that countries overharvesting their allocation in a given year must take corrective action in the following year. Although the preliminary 2002 LPS Angling category landings estimates are currently under review, NMFS is closing the Angling category fishery to take a conservative approach for corrective action while the 2003 fishing year is still under way. Therefore, effective 11:30 p.m. local time on November 17, 2003, the Angling category BFT fishery will be closed in all management areas until further notice.

Upon further examination of the revised 2002 Angling category landings estimates and 2003 Angling category landings estimates, NMFS may reconsider this Angling category closure. If it is determined that 2003 fishing year quota remains available in the Angling category, after adjustments for the 2002 overharvest, or if additional 2003 quota can be made available to the Angling category, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. Anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the anglers tag all BFT so caught, with conventional tags issued or approved by NMFS, return such fish to the sea immediately after tagging with a minimum of injury, and report the tagging (50 CFR 635.26).

Quota Transfer

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

As stated above, preliminary 2002 Angling category landings estimates derived from the ALRS/Tagging data indicated an Angling category quota underharvest for the 2002 fishing year, and to fully utilize the entire 2002 U.S. BFT quota and after considering the quota transfer criteria outlined above, NMFS performed two separate quota transfers in the 2002 fishing year from the Angling category to the General category. These transfers allowed the General category to remain open for a longer period of time, thus providing additional fishing opportunities to General category fishermen in all areas and assisting in the attainment of optimum yield.

The 2003 fishing year proposed and final initial BFT quota specifications were prepared using the baseline 2003 ICCAT BFT quota recommendation, and added or subtracted, as appropriate, underharvest or overharvest from the previous 2002 fishing year in accordance with U.S. regulations and all applicable ICCAT Recommendations, including restrictions on landings of school BFT. As discussed above, the 2003 Angling category fishery is being closed in response to revised Angling category landings estimates for the 2002 fishing year that indicate an overharvest.

As the General category was the recipient of the inseason BFT quota transfers from the Angling category during the 2002 fishing year (due to the apparent underharvest based on the ALRS/tagging estimates) and after considering the criteria for making BFT quota transfers between categories, NMFS has determined that a transfer of 150 mt from the General category to the Reserve category is warranted. The Reserve category was established for the purpose of compensating for any overharvest in any category and this transfer is necessary to meet ICCAT obligations to take corrective actions in the year subsequent to an overharvest.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Revised 2002 LPS Angling category landings estimates, recently made available, indicate an overharvest rather than an underharvest for the 2002 fishing year. As the 2003 BFT quota specifications applied the estimated underharvest from the 2002 fishing year to the 2003 Angling category quota, a closure of the Angling category is warranted to address any potential for additional overharvest while evaluation of the revised landings estimates proceeds. In addition, an inseason BFT quota transfer is warranted to ensure any existing overharvest issues are not exacerbated by additional harvest prior to a full evaluation of the 2002 and 2003 fishing year landings. Delaying this action would be contrary to the public interest because it could result in further overharvest of BFT, an overfished species. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 13, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–28775 Filed 11–13–03; 1:45 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 222
Tuesday, November 18, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

EPA Publication of Advance Notice of Proposed Rulemaking Regarding the Disposal of Low-Activity Radioactive Waste: Request for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of the Environmental Protection Agency Advance Notice of Proposed Rulemaking—''Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment.''

SUMMARY: The Nuclear Regulatory Commission (NRC) announces publication of an Advance Notice of Proposed Rulemaking by the Environmental Protection Agency (EPA) requesting comments on approaches to an integrated framework for management and disposal of low-activity radioactive waste. EPA is considering revising their regulations to permit disposal of certain types of mixed waste, *i.e.*, waste that is characterized as hazardous waste under the Resource Conservation and Recovery Act (RCRA), and radioactive waste under the Atomic Energy Act.

DATES: The comment period on EPA's ANPR expires March 17, 2004.

ADDRESSES: Comments regarding the content of the ANPR should be sent to Dan Schultheisz, Radiation Protection Division, Office of Radiation and Indoor Air Mailcode: 6608J, United States Environmental Protection Agency, 20460–0001; telephone (202) 343–9300; e-mail *schultheisz.daniel@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Eng, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7206, e-mail, *ple@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC) have discussed the possibility of mixed waste disposal in RCRA permitted facilities. Mixed waste is waste that is regulated by both the Resource Conservation and Recovery Act (RCRA), and by the Atomic Energy Act (AEA). Before initiating any rulemaking efforts, EPA is seeking public comment on a number of issues related to the disposal of mixed waste in RCRA permitted facilities in its Advance Notice of Proposed Rulemaking, ''Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment,'' published today.

Notice

The NRC is announcing publication of EPA's Advance Notice of Proposed Rulemaking today in an effort to keep NRC stakeholders informed about regulatory issues which may affect them. EPA's ANPR seeks comment on a number of issues associated with disposal of mixed waste in RCRA permitted facilities, including a discussion of how NRC could be involved. Comments and questions regarding the content of the EPA ANPR should be directed to: Dan Schultheisz, Radiation Protection Division, Office of Radiation and Indoor Air Mailcode: 6608J, United States Environmental Protection Agency, 20460–0001; telephone (202) 343–9300; e-mail *schultheisz.daniel@epa.gov.*

Dated at Rockville, Maryland, this 7th day of November 2003.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Division of Industrial and Medical and Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28496 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, 135

[Docket No. FAA–2002–6717; Notice No. 03–11]

RIN 2120–AI03

Extended Operations (ETOPS) of Multi-Engine Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document makes corrections to the proposed rule published in the **Federal Register** on November 14, 2003 (68 FR 64730), which proposes to issue regulations governing the design, maintenance, and operation of airplanes and engines for flights that go beyond certain distances from an adequate airport.

FOR FURTHER INFORMATION CONTACT: Eric vanOpstal, (202) 267–3774; or E-mail: *eric.vanopstal@faa.gov.*

Correction

In proposed rule FR Doc. 03–28407, published on November 14, 2003 (68 FR 64730), make the following corrections:

1. On page 64791, in the first column, in § 121.7 correct the definition of *ETOPS area of operation* by removing paragraphs (2)(i) and (2)(ii) and renumbering paragraphs (2)(iii) and (2)(iv) as (2)(i) and (2)(ii), respectively.

2. On page 64791, in the second column, in § 121.7 following the definition of *Maximum diversion time,* add definitions for *NOPAC* and *North Pacific* to read as follows:

* * * * *

NOPAC means the North Pacific Air Traffic Service (ATS) routes and adjacent airspace between Anchorage and Tokyo Flight Information Region.

North Pacific means the Pacific Ocean areas north of 40°N latitudes including NOPAC ATS routes, and published PACOTS (Pacific organized track system) tracks between Japan and North America.

* * * * *

Issued in Washington, DC on November 14, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

[FR Doc. 03–28887 Filed 11–14–03; 1:42 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, and 727–100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 727, 727C, 727–100, and 727–100C series airplanes. This proposal would require repetitive detailed and special detailed inspections for cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening; and repair of any crack found. This action is necessary to detect and correct such cracks, which could result in loss of the aft cargo door and rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–205–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–205–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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 917–6437; 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 2003–NM–205–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. 2003–NM–205–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of fatigue cracks associated with the inner and outer chords of the forward and aft frames of the aft cargo door opening on Boeing Model 727 airplanes. The airplanes on which the fatigue cracks were found had accumulated between 24,000 and 51,000 total flight cycles. The fatigue cracks were discovered during the accomplishment of routine inspections and inspections specified in the Boeing 727 Supplemental Structural Inspection Document. This condition, if not detected and corrected in a timely manner, could result in loss of the aft cargo door and rapid decompression of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003, which describes procedures for repetitive detailed inspections and special detailed (high frequency eddy current) inspections for cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening, and repair of any crack found. The alert service bulletin also recommends that operators contact Boeing for repair instructions. These inspections are recommended on airplanes before they have accumulated 24,000 total flight cycles, or within 3,000 flight cycles after the effective date of the AD, whichever occurs later, and are repeated at intervals not to exceed 3,000 flight cycles. A terminating modification to the repetitive inspections is currently not available.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Alert Service Bulletin

The service bulletin specifies compliance times relative to the date of the service bulletin; however, this proposed AD would require compliance

with the thresholds after the effective date of the AD.

Although the alert service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the Manager of the Seattle Aircraft Certification Office of the 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 of the Seattle Aircraft Certification Office of the FAA to make such findings.

This proposed AD would also require that, within 12 months following a repair, operators implement an inspection program for the repair into the 727 maintenance program in accordance with a method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. To ensure timely detection of cracking in those areas, we have determined that new inspection methods and compliance times are necessary for areas that have been repaired. The new inspection methods and compliance times should meet the requirements of 14 CFR 25.571 (Amendment 25–54 or later).

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. We estimate that 129 airplanes of U.S. registry would be affected by this proposed AD. We provide the following cost estimates for the proposed inspections, per inspection cycle:

TABLE.—COSTS

Airplanes	Work hours	Hourly labor rate	Parts	Cost per airplane
Group 1 airplanes not modified per Boeing Service Bulletin 727–53–0045 ...	2	$65	$0	$130
Group 1 airplanes modified per Boeing Service Bulletin 727–53–0045	3	65	0	195
Group 2 airplanes	3	65	0	195

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–205–AD.

Applicability: Model 727, 727C, 727–100, and 727–100C series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening, which could result in loss of the aft cargo door and rapid decompression of the airplane, accomplish the following:

Inspections and Corrective Action

(a) Perform a detailed inspection and a special detailed (high-frequency eddy current) inspection for cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening. Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003; except, where the service bulletin specifies a compliance time after the effective date of the service bulletin date, this AD requires compliance within the specified compliance time after the effective date of this AD. Do the inspection in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no crack is found: Repeat the inspection within the interval listed in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) If any crack is found: Repair it before further flight in accordance with 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 (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD. Within 12 months following a repair, implement an inspection program for the repair into the 727 maintenance program in accordance with a

method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on November 12, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28736 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900, 1900C, 1900C (C–12J), and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: The FAA proposes to revise an earlier proposed airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900, 1900C, 1900C (C–12J), and 1900D airplanes that do not have canted bulkhead Kit No. 129–4005–1 S incorporated. The earlier NPRM would have required you to repetitively inspect the canted bulkhead located at Fuselage Station (FS) 588.10 for cracks. If cracks are found that exceed certain limits, the NPRM would have required you to incorporate canted bulkhead Kit No. 129–4005–1 S as terminating action for the proposed AD repetitive inspection requirement. When Kit No. 129–4005–1 S is incorporated, no further action is required. The earlier NPRM resulted from numerous reports of multi-site cracks occurring in the canted bulkhead at Fuselage Station 588.10. The NPRM contradicts the FAA's policy to disallow airplane operation when known cracks exist in primary structure. You should have the kit incorporated anytime a crack is found and we are revising the NPRM accordingly. Since this action imposes an additional burden over that proposed in the earlier NPRM, we are reopening the comment period to allow the public the chance to comment on these revised actions.

DATES: We must receive any comments on this proposed AD by January 16, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 95–CE–46–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 95–CE–46–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.

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

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused the Earlier Proposed AD?

The FAA has received numerous reports of multi-site cracks in the canted bulkhead at Fuselage Station (FS) 558.10 on 3 Raytheon Model 1900, 1900C, and 1900D airplanes. These cracks were found at the outer flange radius and outer flange stringer cutouts of the canted bulkhead.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900, 1900C, 1900C (C–12J), and 1900D airplanes that do not have canted bulkhead Kit No. 129–4005–1 S incorporated. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 4, 1995 (60 FR 51944). The earlier NPRM proposed to require you to:

—repetitively inspect the canted bulkhead located at FS 588.10 for cracks; and

—incorporate canted bulkhead Repair Kit No. 129–4005–1 S if cracks exceed certain limits and as a terminating action for the repetitive inspection requirement.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We received two comments in support of the proposed rule.

What Has Happened To Initiate This Supplemental NPRM?

As currently written, the existing NPRM allows continued flight if cracks are found in the canted bulkhead located at FS 588.10 that do not exceed certain limits. The NPRM contradicts the FAA's policy to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The canted bulkhead located at FS 588.10 is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this

area. For this reason, the FAA has determined that the crack limits contained in the NPRM should be eliminated and that AD action should be taken to require immediate incorporation of canted bulkhead Repair Kit No. 129–4005–1 S anytime a crack is found.

Raytheon has revised Service Bulletin SB 53–2564, Revision 2, Revised: July 2003, to remove flight with allowable crack limits.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could prevent the bulkhead from carrying its ultimate design load because of cracks in the canted bulkhead. Failure of the bulkhead could affect the rudder cable tension and result in loss of rudder control.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

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

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 1900, 1900C, 1900C (C–12J), and 1900D airplanes of the same type design that do not have canted bulkhead Repair Kit No. 129–4005–1 S incorporated airplanes:

—The NPRM should be changed to disallow airplane operation when known cracks exist in primary structure; and

—AD action should be taken in order to correct this unsafe condition.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Proposing that the NPRM disallow flight with cracks imposes an additional burden over that proposed in the earlier NPRM. Therefore, we are reopening the comment period to allow the public the chance to comment on these revised actions.

What Are the Provisions of the Supplemental NPRM?

The proposed AD would require you to:

—Repetitively inspect the canted bulkhead located at FS 588.10 for cracks; and

—Incorporate canted bulkhead Repair Kit No. 129–4005–1 S if any cracks are found and as a terminating action for the repetitive inspection requirement. When Kit No. 129–4005–1 S is incorporated, no further action is required.

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

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

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 364 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 364 = $47,320.

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
80 workhours × $65 per hour = $5,200	$718	$5,918	$5,918 × 364 = $2,154,152.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

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

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

For the reasons discussed above, I certify that this proposed AD:

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 proposed 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. 95–CE–46–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Raytheon Aircraft Company: Docket No. 95–CE–46–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by January 16, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that:

(1) Do not have canted bulkhead Kit No. 129–4005–1 S incorporated; and

(2) Are certificated in any category:

Model	Serial Nos.
1900	UA–1 through UA–3.
1900C	UB–1 through UB–74 and UC–1 through UC–174.
1900C (C12J)	UD–1 through UD–6.
1900D	UE–1 through UE–113.

(d) This AD is the result of FAA establishing a policy to disallow airplane operation when known cracks exist in primary structure. The actions specified in this AD are intended to detect and correct cracks in the canted bulkhead, which could result in failure of the bulkhead. Such failure could lead to loss of rudder control.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the canted bulkhead at Fuselage Station 588.10 for any signs of cracks.	Initially inspect at whichever occurs later, unless already accomplished: Upon the accumulation of 5,000 hours time-in-service (TIS) or within the next 600 hours TIS after the effective date of this AD. If no cracks are found, repetitively inspect thereafter at intervals not to exceed 600 hours TIS until Kit No. 129–4005–1 S is incorporated. When Kit No. 129–4005–1 S is incorporated, no further action is required.	Per Raytheon Aircraft Company Mandatory Service Bulletin SB 53–2564, Revision 2, Revised: July 2003.
(2) If cracks exist or are found during any inspection required in paragraph (e)(1) of this AD, incorporate Kit No. 129–4005–1 S.	Prior to further flight after the inspection in which the cracks are found or known to exist.	Per Raytheon Aircraft Company Mandatory Service Bulletin SB 53–2564, Revision 2, Revised: July 2003.
(3) Incorporating Kit No. 129–4005–1 S is the terminating action for the repetitive inspection requirements specified in paragraph (e)(1) of this AD.	Kit No. 129–4005–1 S can be incorporated at any time. When incorporated, no further action is required.	Per Raytheon Aircraft Company Mandatory Service Bulletin SB 53–2564, Revision 2, Revised: July 2003.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28737 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727–100C, 727–200F, and 727C 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 727, 727–100C, 727–200F, and 727C series airplanes. This proposal would require repetitive open-hole high frequency eddy current inspections for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door, and repair of any cracks found. This action is necessary to detect and correct such cracks, which could reach critical crack length and result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003-NM–191-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–191–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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; 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 2003–NM–191–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. 2003–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of multiple fatigue cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main cargo door on six airplanes. The cracks have been up to 0.15 inch long and have originated from the fastener holes common to the forward and aft main cargo door hinge fittings. The cracks have been found on airplanes with between 45,000 and 66,300 flight hours, and between 34,000 and 50,000 flight cycles. The cracks were discovered during the accomplishment of the inspections specified in the Supplemental Structural Inspection Document. Such cracking, if not corrected, could reach critical crack length and result in rapid decompression of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003, which describes procedures for repetitive open-hole high frequency eddy current inspections for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door. These inspections are recommended on airplanes before they have accumulated 30,000 total flight cycles, or within 1,500 flight cycles (or 3,000 flight cycles for freighters) after the effective date of the AD, whichever occurs later, and are repeated at intervals not to exceed 10,000 flight cycles. The fittings are located at body stations 486 and 610 and at stringer 3L. The service bulletin recommends that operators contact Boeing for repair instructions.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Service Bulletin

The service bulletin specifies compliance times relative to the date of the service bulletin; however, this proposed AD would require compliance with the thresholds after the effective date of the AD.

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the Manager of the Seattle Aircraft Certification Office of the 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 FAA to make such findings.

This proposed AD would also require that, within 12 months following a repair, operators implement an inspection program for the repair into the 727 maintenance program in accordance with a method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. To ensure timely detection of cracking in those areas, we have determined that new inspection methods and compliance times are necessary for areas that have been repaired. The new inspection methods and compliance times should meet the requirements of 14 CFR 25.571 (Amendment 25–54 or later).

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. We estimate that 133 airplanes of U.S. registry would be affected by this proposed AD. We provide the following cost estimates to comply with this proposed AD, per inspection cycle:

Group	Work hours	Hourly labor rate	Parts	Cost per airplane
1	7	$65	$0	$455
2	8	65	0	520
3	8	65	0	520

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–191–AD.

Applicability: Model 727, 727–100C, 727–200F, and 727C series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the fuselage skin, strap (bearstrap), or doubler at the forward and aft hinge fittings for the main deck cargo door, which could reach critical crack length and result in rapid decompression of the airplane, accomplish the following:

Inspection

(a) Perform an open-hole high frequency eddy current inspection for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door. Do the inspection at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003; except, where the service bulletin specifies a compliance time after the service bulletin date, this AD requires compliance within the specified compliance time after the effective date of this AD. Perform the inspection in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no crack is found: Repeat the inspection within the interval listed in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) If any crack is found: Repair it before further flight in accordance with 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 refer to this AD. Within 12 months following a repair, implement an inspection program for the repair into the 727 maintenance program in accordance with a method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on November 12, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28738 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for GE CF6–80C2 turbofan engines with certain part number (P/N) high pressure turbine stage 2 nozzle guide vanes (HPT S2 NGVs) installed. This proposed AD would require flex borescope inspections of HPT S2 NGVs installed in CF6–80C2 turbofan engines. This proposed AD is prompted by an uncontained engine failure due to HPT S2 NGV distress. We are proposing this AD to prevent blade failure from HPT S2 NGV distress, which could result in an uncontained engine failure.

DATES: We must receive any comments on this proposed AD by January 20, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–43–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On May 18, 2001, an uncontained engine failure and an in-flight shutdown occurred on a CF6–80C2 engine installed in an Airbus A300 airplane. The engine nacelle was penetrated, and damage occurred to wing skin panels and an inboard aileron. Investigation revealed that the uncontained engine failure was caused by cracking and sagging of HPT S2 NGVs, which resulted in multiple HPT stage 2 blade failure and uncontainment at the low pressure turbine case. To date, three uncontained failures of this type on CF6–80C2 engines have been reported. Additionally, twelve reports have been received of HPT S2 NGV outer airfoil fillet cracking, NGV sagging, and HPT stage 2 blade damage. Eleven of these report findings resulted in engine removal, and one finding was discovered during engine disassembly. Similar events have occurred on other CF6 engine models with similar design HPT S2 NGVs, which have resulted in nacelle penetration and minor airplane damage. CF6–80C2 engines with pre-service bulletin (SB) No. S/B 72–0978 HPT S2 NGVs installed, are more susceptible to airfoil outer fillet cracking. This cracking can propagate to a condition where the nozzle segment sags backward and contacts the HPT stage 2 blade row. This contact can progress to notching of the blade airfoil at the root and lead to blade failure. The actions specified in this AD are intended to prevent blade failure from HPT S2 NGV distress, which could result in an uncontained engine failure.

Relevant Service Information

We have reviewed and approved the technical contents of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, that describes procedures for initial and repetitive flex borescope inspections of affected HPT S2 NGVs.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require flex borescope inspections of the following P/N HPT S2 NGVs installed in CF6–80C2A1, –80C2A2, –80C2A3, –80C2A5, –80C2A5F, –80C2A8, –80C2B1, –80C2B1F, –80C2B2, –80C2B2F, –80C2B4, –80C2B4F, –80C2B5F, –80C2B6, –80C2B6F, –80C2B6FA, –80C2B7F, and –80C2D1F turbofan engines:

- P/N 1347M66G03, P/N 1347M66G04, and P/Ns 1815M81G01 through 1815M81G07, if insert P/N 1957M40G01/G02 was installed during repair.
- P/Ns 9373M80G07 through 9373M80G22, and P/Ns 9373M80G25 through 9373M80G32, if insert P/N 1957M40G01/G02 was installed during repair, or if NGV was repaired by GE between April 1, 1998 through September 30, 1999.
- P/Ns 9373M80G33 through 9373M80G36.
- P/Ns 2080M38G01 through 2080M38G16, and P/Ns 2080M38G19 through 2080M38G24.
- P/Ns 2080M19G01 through 2080M19G04, P/Ns 2080M19G07 through 2080M19G16, P/Ns 2080M19G19 through 2080M19G46, P/Ns 2080M19G49 through 2080M19G70, and P/Ns 2080M19G73 through 2080M19G80.

The proposed AD would require you to use the service information described previously to perform these actions.

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

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 1,100 GE CF6–80C2 turbofan engines of the affected design in the worldwide fleet. We estimate that 300 of these engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 2 work hours per engine to perform the proposed inspections on engines that exhibit no damage, and therefore require no mapping of damage, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $39,000.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 2003–NE–43–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2A1, –80C2A2, –80C2A3, –80C2A5, –80C2A5F, –80C2A8, –80C2B1, –80C2B1F, –80C2B2, –80C2B2F, –80C2B4, –80C2B4F, –80C2B5F, –80C2B6, –80C2B6F, –80C2B6FA, –80C2B7F, and –80C2D1F turbofan engines, with the part numbers (P/Ns) of high pressure turbine (HPT) stage 2 nozzle guide vanes (HPT S2 NGVs) listed in the following Table 1, installed:

TABLE 1.—AFFECTED HPT S2 NGVS

HPT S2 NGV:	Provided that:
P/N 1347M66G03, P/N 1347M66G04, and P/Ns 1815M81G01 through 1815M81G07.	Insert, P/N 1957M40G01/G02 was installed during repair.
P/Ns 9373M80G07 through 9373M80G22, and P/Ns 9373M80G25 through 9373M80G32.	Insert, P/N 1957M40G01/G02 was installed during repair, or NGV was repaired by GE between April 1, 1998 through September 30, 1999.
P/Ns 9373M80G33 through 9373M80G36.	
P/Ns 2080M38G01 through 2080M38G16, and P/Ns 2080M38G19 through 2080M38G24.	
P/Ns 2080M19G01 through 2080M19G04, P/Ns 2080M19G07 through 2080M19G16, P/Ns 2080M19G19 through 2080M19G46, P/Ns 2080M19G49 through 2080M19G70, and P/Ns 2080M19G73 through 2080M19G80.	

These engines are installed on, but not limited to, Airbus A300, Airbus A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 airplanes.

Unsafe Condition

(d) This AD is prompted by an uncontained engine failure due to HPT S2 NGV distress. We are issuing this AD to prevent blade failure from HPT S2 NGV distress, which could result in an uncontained engine failure.

Compliance

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

Initial Flex Borescope Inspection of NGVs

(f) Flex borescope-inspect the NGVs, following paragraph 3. of Accomplishment Instructions of GE Service Bulletin (SB) No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, as follows:

Initial Inspection Thresholds

(1) For all P/N NGVs except for P/Ns 9373M80G33 through 9373M80G36 that were installed new at time of original build or were installed new or used and serviceable (not repaired) at HPT overhaul, initial-inspect after the effective date of this AD at the following applicable interval:

(i) For CF6–80C2A2, −80C2B2, and −80C2B2F engines, inspect at or before accumulating 1,600 HPT cycles-since-overhaul (CSO).

(ii) For CF6–80C2A1, −80C2A3, −80C2A5, −80C2A5F, −80C2A8, −80C2B1, −80C2B1F, −80C2B4, −80C2B4F, −80C2B5F, −80C2B6, −80C2B6F, −80C2B6FA, −80C2B7F, and −80C2D1F engines, inspect at or before accumulating 800 CSO.

Initial Inspection Thresholds for NGVs P/Ns 9373M80G33 Through 9373M80G36 Installed at HPT Overhaul

(2) For NGVs P/Ns 9373M80G33 through 9373M80G36 that were installed new at the time of original engine build, initial-inspect after the effective date of this AD at the following applicable interval:

(i) For CF6–80C2A2, −80C2B2, and −80C2B2F engines, inspect at or before accumulating 3,600 CSO.

(ii) For CF6–80C2A1, −80C2A3, −80C2A8, −80C2B1, −80C2B1F, −80C2B4, and −80C2B4F engines, inspect at or before accumulating 3,000 CSO.

(iii) For CF6–80C2A5, −80C2A5F, −80C2B5F, −80C2B6, −80C2B6F, −80C2B6FA, −80C2B7F, and −80C2D1F engines, inspect at or before accumulating 2,800 CSO.

Initial Inspection Thresholds for Original Build NGVs P/Ns 9373M80G33 Through 9373M80G36

(3) For NGVs P/Ns 9373M80G33 through 9373M80G36 that were installed new, or used and serviceable (not repaired) at HPT overhaul, initial-inspect after the effective date of this AD at the following applicable interval:

(i) For CF6–80C2A2, −80C2B2, and −80C2B2F engines, inspect at or before accumulating 2,400 CSO.

(ii) For CF6–80C2A1, −80C2A3, −80C2A5, −80C2A5F, −80C2A8, −80C2B1, −80C2B1F, −80C2B4, −80C2B4F, −80C2B5F, −80C2B6, −80C2B6F, −80C2B6FA, −80C2B7F, and −80C2D1F engines, inspect at or before accumulating 1,600 CSO.

Reinspection

(g) Reinspect or remove from service NGVs following the Conditions and Reinspection intervals listed in the ''Inspection Table for Cracking in the Airfoil Outer Fillet'', Figure 5, of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003.

Engines With Mixed NGV Configurations

(h) For engines with mixed NGV configurations of part numbers or repair status, use the lowest applicable initial inspection thresholds and re-inspection intervals.

Alternative Methods of Compliance

(i) 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

(j) You must use GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, to perform the inspections and removals required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on November 12, 2003.

Francis A. Favara,

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

[FR Doc. 03–28739 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–311–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, −401, and −402 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 Bombardier Model DHC–8–400, −401, and −402 airplanes. This proposal would require replacing certain flight guidance modules with improved modules, and certain flight control electronic control units with improved units. This action is necessary to prevent loss of the autopilot or manual pitch trim, which may increase the workload of the flightcrew and, under certain conditions, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–311–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–311–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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sassoon, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–311–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–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that two unsafe conditions may exist on certain Bombardier Model DHC–8–400, -401, and -402 airplanes. TCCA advises that, on certain airplanes, a malfunction in the pitch trim system may occur due to asynchrony between the autopilot pitch trim commands of flight guidance modules (FGMs) 1 and 2. This asynchrony is due to noise at frequencies close to the sampling rate in the signal on the FGM's acquisition channel. This could result in loss of the autopilot pitch trim, which would require the flightcrew to disengage the autopilot and fly the airplane manually.

TCCA also advises that, on certain airplanes, a malfunction in the manual pitch trim system may occur in which the monitoring/modeling circuitry in the flight control electronic control units (FCECU) disables the pitch trim system. This may occur due to unidirectional cycling and rapid reversals of pitch trim commands by the flightcrew. This results in a nuisance warning of pitch trim runaway or loss of the pitch trim system.

These two conditions, if not corrected, could significantly increase the workload of the flightcrew, and in adverse conditions, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 84–22–04, Revision ''B,'' dated April 17, 2002, which describes procedures for replacing FGM1 and FGM2 with improved FGMs, and performing a Return-to-Service procedure. That service bulletin refers to Thales Service Bulletin C12429A–22–003, dated November 29, 2001, as an additional source of service information for modifying the FGMs to the improved configuration. The Thales service bulletin is included in the Bombardier service bulletin.

Bombardier has also issued Service Bulletin 84–27–14, Revision ''A,'' dated April 2, 2002, which describes procedures for replacing FCECUs with improved FCECUs. That service bulletin refers to Parker Service Bulletin 398500–27–235, dated January 9, 2002, as an additional source of service information for modifying the FCECUs to the improved configuration. The Parker service bulletin is included in the Bombardier service bulletin.

Accomplishment of the actions specified in the applicable Bombardier service bulletin is intended to

adequately address the identified unsafe condition. TCCA classified the Bombardier service bulletins as mandatory and issued Canadian airworthiness directive CF–2002–25, dated April 25, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed AD and Parallel TCCA Airworthiness Directive

Operators should note that, although the parallel Canadian airworthiness directive includes maintenance procedures that may be used as interim procedures until the affected FGMs and FCECUs can be replaced with improved parts, this proposed AD does not reference such interim procedures.

Cost Impact

We estimate that 12 airplanes of U.S. registry would be affected by the proposed replacement of FGMs, that it would take approximately 1 work hour per airplane to accomplish this proposed replacement, and that the average labor rate is $65 per work hour. Required parts would be provided at no charge. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $780, or $65 per airplane.

We estimate that 15 airplanes of U.S. registry would be affected by the proposed replacement of the FCECUs, that it would take approximately 4 work hours per airplane to accomplish this proposed replacement, and that the average labor rate is $65 per work hour. Required parts would be provided at no charge. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $3,900, or $260 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 AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–311–AD.

Applicability: Model DHC–8–400, –401, and –402 airplanes; certificated in any category; having serial numbers (S/Ns) 4001 through 4065 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the autopilot or manual pitch trim, which may increase the workload of the flightcrew and, under certain conditions, could result in reduced controllability of the airplane, accomplish the following:

Replacement of Flight Guidance Modules

(a) For airplanes with S/Ns 4001 through 4003 inclusive and 4005 through 4058 inclusive: Within 60 days after the effective date of this AD, replace flight guidance modules (FGMs) FGM1 and FGM2, part number (P/N) C12429AA06, with improved FGMs, P/N C12429AA07, and perform a Return-to-Service procedure, per Bombardier Service Bulletin 84–22–04, Revision ''B,'' dated April 17, 2002.

Note 1: Bombardier Service Bulletin 84–22–04, Revision ''B,'' refers to Thales Service Bulletin C12429A–22–003, dated November 29, 2001, as an additional source of service information for modifying FGMs from P/N C12429AA06 to P/N C12429AA07. The Thales service bulletin is included in the Bombardier service bulletin.

Replacement of Flight Control Electronic Control Units

(b) For all airplanes: Within 8 months after the effective date of this AD, replace flight control electronic control units (FCECUs), P/N 398500–1001 or –1003, with improved FCECUs, P/N 398500–1005, and perform a Return-to-Service procedure, per Bombardier Service Bulletin 84–27–14, Revision ''A,'' dated April 2, 2002.

Note 2: Bombardier Service Bulletin 84–27–14, Revision ''A,'' refers to Parker Service Bulletin 398500–27–235, dated January 9, 2002, as an additional source of service information for modifying FCECUs from P/N 398500–1001 or -1003 to P/N 398500–1005. The Parker service bulletin is included in the Bombardier service bulletin.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–25, dated April 25, 2002.

Issued in Renton, Washington, on November 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28732 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–30–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 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 Dassault Model Mystere-Falcon 50 series airplanes. This proposal would require applying PR (fuel tank sealant) and installing PR patches over the internal side panel recesses of the left-hand and right-hand feeder tanks at certain frames and stringers. This action is necessary to prevent fuel ignition in the event of a lightning strike and consequent uncontained rupture of the fuel tank(s). This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–30–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 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. 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 2003–NM–30–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. 2003–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that an operator reported a lightning strike during final approach that impacted many points of the fuselage. At one impact point between frame 30 and frame 30A, the lightning pierced the fuselage skin, which is also the fuel tank skin in this area. Investigation revealed that the internal side walls of the left-hand and right-hand fuselage fuel (LH and RH feeder) tanks are not thick enough to properly withstand the effects of a lightning strike. This condition, if not corrected, could result in fuel ignition in the event of a lightning strike, and consequent uncontained rupture of the fuel tank(s).

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F50–415, dated November 27, 2002, which describes procedures for application of PR (fuel tank sealant) and installation of PR patches over the internal side-panel recesses of the LH and RH feeder tanks. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–595(B), dated November 27, 2002, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and submitting a sheet recording compliance with the service bulletin, this proposed AD would not require that action.

Cost Impact

The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours to accomplish the proposed application and installation, and that the average labor rate is $65 per work hour. Required parts would cost approximately $5,890 per airplane. Based on these figures, the cost impact of the proposed AD on all U.S. operators is estimated to be $1,808,370, or $8,490 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 2003–NM–30–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, certificated in any category, except those airplanes on which Dassault Modification M2491 or Dassault Modification M673 has been implemented.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel ignition in the event of a lightning strike and consequent uncontained rupture of the fuel tank(s), accomplish the following:

Installation

(a) Within 18 months from the effective date of this AD, apply PR (fuel tank sealant) and install PR patches over the internal side-panel recesses of the left-hand and right-hand feeder tanks between frame 28 and frame 31 and from stringer 5 to stringer 13, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–415, dated November 27, 2002. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA; [or the DGAC or their delegate]; is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–595(B), dated November 27, 2002.

Issued in Renton, Washington, on November 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28733 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require repetitive inspections for damage of the horizontal and vertical stabilizer attachment fittings, and corrective action if necessary. This action is necessary to detect and correct damage of the horizontal and vertical stabilizer attachment fittings, which could result in reduced structural integrity of the horizontal and vertical stabilizers and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–63–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–63–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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–63–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–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that inspections of in-service airplanes have revealed fretting corrosion on the eye-bolt shanks and the lugs of the forward and rear attachment fittings of the horizontal and vertical stabilizers. This condition, if not corrected, could result in reduced structural integrity of the horizontal and vertical stabilizers and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–55–012, dated October 24, 2002. That service bulletin describes procedures for repetitive detailed inspections for damage of the horizontal and vertical stabilizer attachment fittings, and corrective action if necessary. The procedures include:

- Inspecting bolts for damage such as corrosion and wear, and replacing the bolt with a new bolt if the diameter of the bolt is outside the limits specified in the service bulletin.
- Inspecting the bushings of the horizontal stabilizer attachment fitting and the hole in the vertical stabilizer attachment fitting for corrosion or wear, and replacing the bushing with a new bushing if the internal diameter of the bushing is outside the limits specified in the service bulletin.
- Inspecting the attachment fittings of the horizontal and vertical stabilizers for corrosion or fretting at the lug faces, and blending out corrosion, dents, or scratches within the limits specified in the service bulletin.
- Inspecting the eye bolts for cracking, corrosion, fretting, or degradation of cadmium plating; and replacing the eye bolt with a new bolt if any degradation of the cadmium plating is found; or repairing if any cracking, corrosion, dents, or scratches are found.

BAE Systems (Operations) Limited Service Bulletin J41–55–012 refers to BAE Systems (Operations) Limited Service Bulletin J41–55–002 as an additional source of service information for accomplishing certain actions. The current version of BAE Systems (Operations) Limited Service Bulletin J41–55–002 is Revision 1, dated July 25, 1996.

Accomplishment of the actions specified in BAE Systems (Operations) Limited Service Bulletin J41–55–012 is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–10–2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Service Bulletin J41–55–012

Although BAE Systems (Operations) Limited Service Bulletin J41–55–012 specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either us or the CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either us or the CAA would be acceptable for compliance with this proposed AD.

Although the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–55–012 describe procedures for reporting all findings to the

manufacturer by completing the Reporting Data Form on Figures 1, 2, 3, and 4 of the service bulletin, this proposed AD would not require this action. We do not need this information from operators.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 120 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $444,600, or $7,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–63–AD.

Applicability: All Jetstream Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the horizontal and vertical stabilizer attachment fittings, which could result in reduced structural integrity of the horizontal and vertical stabilizers and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term ''service bulletin'' as used in this AD means the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–55–012, dated October 24, 2002.

(2) Although the service bulletin referenced in this AD specifies to report all findings to the manufacturer by completing the Reporting Data Form on Figures 1, 2, 3, and 4 of the service bulletin, this AD does not include such a requirement.

(3) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Service Bulletin J41–55–011, dated January 25, 2002, are acceptable for compliance with the corresponding action required by this AD.

Repetitive Inspections

(b) Within 2 years after the effective date of this AD, perform a detailed inspection for damage of the horizontal and vertical stabilizer attachment fittings by doing all actions in the service bulletin, per the service bulletin. Repeat the inspection at intervals not to exceed 8 years.

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.''

Repair

(c) If any damage (cracks, corrosion, wear, fretting) is found during any inspection per paragraph (b) of this AD: Do the applicable corrective action specified in the service bulletin at the time specified in the service bulletin per the service bulletin, except as required by paragraph (d) of this AD.

(d) If any damage is found that is outside the limits specified in the service bulletin, and the service bulletin recommends contacting BAE Systems (Operations) Limited for appropriate action: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Note 2: The service bulletin refers to BAE Systems (Operations) Limited Service Bulletin J41–55–002; currently at Revision 1, dated July 25, 1996; as an additional source of service information for accomplishing certain actions.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in British airworthiness directive 005–10–2002.

Issued in Renton, Washington, on November 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28734 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 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 A320–111, –211, and –231 series airplanes, that currently requires repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action if

necessary. That AD also provides for an optional terminating modification for the repetitive inspection requirements. This action would reduce the compliance time for the inspections for cracking of the same area. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–118–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–118–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–118–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–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 2, 1998, the FAA issued AD 98–12–18, amendment 39–10573 (63 FR 31345, June 9, 1998), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, to require repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action if necessary. That AD also provides for an optional terminating modification for the repetitive inspection requirements. That action was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–12–18, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that a full-scale fatigue survey on the Model A320 fleet revealed that the weight of fuel at landing and the mean flight duration are higher than those defined for the analysis of fatigue-related tasks. This has led to an adjustment of the fatigue mission for the A320 fleet, in that the DGAC has reduced the compliance threshold and intervals in France from landings to flight cycles and flight hours for accomplishment of the inspections for fatigue cracking required by the existing AD. Fatigue-related cracking in the pick-up and transition angles in the lower part of the center fuselage could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002. The inspection procedures specified in Revision 01 are essentially the same as those in the original issue of the service bulletin, which was referenced in the existing AD for accomplishment of the inspections and corrective action. However, Revision 01 has a change that recommends a reduction in the compliance time specified in the original issue by adding flight cycles and flight hours as a reduction in thresholds.

Airbus also has issued Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002. The modification procedures in Revision 03 are essentially the same as those in Revision 02 of the service bulletin, which was referenced in the existing AD for accomplishment of the modification. The changes in Revision 03 are minor editorial changes.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–183(B), dated April 3, 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 AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–12–18 to continue to require repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action if necessary. The proposed AD also would continue to provide for an optional terminating modification for the repetitive inspection requirements. This new action would reduce the compliance time for the inspections for fatigue cracking of the same area. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Change to Existing AD

The compliance time in the existing AD specified landings; however, this proposed AD would specify flight cycles (which are essentially the same as landings) and flight hours as a reduction in thresholds.

Differences in Proposed AD, Referenced Service Bulletins, and Related French AD

The service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions; however, this proposed AD would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

The service bulletins describe procedures for submitting a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. We do not need this information from operators.

Service Bulletin A320–52–1028 refers only to a ''visual inspection'' for cracking of the transition and pick-up angles in the lower part of the center fuselage area. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' For clarification purposes, all references to a visual inspection in the existing AD have been changed accordingly. A new Note 2 has been included in this proposed AD to define this type of inspection.

The service bulletins specify Model A320–212 series airplanes, while the applicability of this proposed AD specifies Model A320–111, –211, and –231 series airplanes without modification 21202 in production, as these are the only airplanes affected by the unsafe condition.

Cost Impact

There are approximately 24 airplanes of U.S. registry that would be affected by this proposed AD. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

The inspections that are currently required by AD 98–12–18, and retained in this proposed AD, take about 9 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 on U.S. operators is estimated to be $14,040, or $585 per airplane, per inspection cycle.

The cost impact figure discussed above is 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.

If an operator chooses to do the optional terminating modification rather than continue the repetitive inspections, it would take between 5 and 10 work hours per airplane to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would cost between $1,077 and $1,837 per airplane. Based on these figures, the cost impact of the modification proposed by this AD is estimated to be between $1,402 and $2,487 per airplane.

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 39–10573 (63 FR 31345, June 9, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–118–AD. Supersedes AD 98–12–18, Amendment 39–10573.

Applicability: Model A320–111, –211, and –231 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002; or Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could

result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel, accomplish the following:

Restatement of Requirements of AD 98–12–18

Repetitive Inspections/Corrective Actions/Modification

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after July 14, 1998 (the effective date of AD 98–12–18, amendment 39–10573), whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1028, dated March 1, 1994.

(1) Perform a detailed inspection to detect cracks of the transition angle, in accordance with the service bulletin.

(i) If no crack is detected during the detailed inspection required by paragraph (a)(1) of this AD, accomplish either paragraph (a)(1)(i)(A) or paragraph (a)(1)(i)(B) of this AD.

(A) Repeat the detailed inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i)(A) of this AD.

(ii) If any crack is detected during the detailed inspection required by paragraph (a)(1) of this AD, prior to further flight, replace the transition angle with a new transition angle, in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995.

(2) Perform a rotating probe inspection to detect cracks of the pick-up angle, in accordance with the service bulletin.

(i) If no crack is detected during the rotating probe inspection required by paragraph (a)(2) of this AD, accomplish either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD.

(A) Repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i)(A) of this AD.

(ii) If any crack is detected and it is less than 1.9 mm in length, prior to further flight, accomplish the applicable corrective actions specified in the service bulletin. For holes that have not been modified in accordance with the service bulletin, repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings.

(iii) If any crack is detected and it is 1.9 mm or greater in length, prior to further flight, repair it in accordance with the method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 1: Accomplishment of the replacement/modification in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994, or Revision 01, dated September 5, 1994, prior to the effective date of this AD, is considered acceptable for compliance with the applicable action specified in this AD.

New Requirements of This AD

Detailed and Rotating Probe Inspections

(b) For airplanes on which the modification specified in AD 98–12–18 has not been done: Do the applicable inspections specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002.

(1) For airplanes on which the inspections required by AD 98–12–18 have been done: Within 12,000 flight cycles after accomplishment of the last inspection required by paragraphs (a)(1)(i)(A) and (a)(2)(i)(A) of this AD, as applicable; do a detailed inspection of the transition angle and a rotating probe inspection of the pick-up angle in the lower part of the center fuselage area for cracking.

(2) For airplanes on which the inspections required by AD 98–12–18 have not been done: At the later of the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD; do a detailed inspection of the transition angle and a rotating probe inspection of the pick-up angle in the lower part of the center fuselage area for cracking.

(i) Before the accumulation of 10,400 total flight cycles, or 24,600 total flight hours, whichever is first.

(ii) Before the accumulation of 16,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Repetitive Inspections

(c) Repeat the detailed and rotating probe inspections specified in paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 10,400 flight cycles or 24,600 flight hours, whichever is first, until the modification specified in paragraph (e) of this AD has been done.

Note 2: 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.''

Corrective Action

(d) If any cracking is found during any inspection required by paragraph (b) or (c) of this AD: Prior to further flight, either repair the cracking per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002; or do the modification specified in paragraph (e) of this AD. Where the service bulletin specifies to contact the manufacturer for repair instructions, prior to further flight, repair the cracking in accordance with the method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent). If the cracking is repaired, repeat the inspections as required by paragraph (c) of this AD.

Modification

(e) Modification of the transition and pick-up angles in the lower part of the center fuselage in accordance with paragraphs 3.A. through 3.D. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002, ends the repetitive inspections required by this AD.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2002–183(B), dated April 3, 2002.

Issued in Renton, Washington, on November 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28735 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–355–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require repetitive inspections for cracking in the casing of the nose landing gear (NLG), and corrective action if necessary. This action is necessary to find and fix cracking of the NLG casing, which could result in failure of the NLG, and consequent reduced controllability of the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–355–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–355–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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 2001–NM–355–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–355–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that cracks have been found in a number of nose landing gear (NLG) casings. This condition, if not corrected, could result in failure of the NLG, and consequent reduced controllability of the airplane during takeoff and landing.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Alert Service Bulletin J41–A32–079, Revision 2, dated April 28, 2003. That alert service bulletin describes procedures for repetitive detailed and fluorescent dye penetrant inspections for cracking in the casing of the NLG, and corrective actions if necessary. If cracking is found, the corrective actions include repairing the casing (if cracking is within certain limits), or replacing with a new or serviceable NLG casing (if cracking exceeds those limits). Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 004–10–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, refers to APPH Ltd. Service Bulletin AIR83586–32–18, Revision 1, dated October 2001, as an additional source of service information for the accomplishment of certain actions therein.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, described previously, except as discussed below.

Differences Between Proposed Rule and Referenced Alert Service Bulletin

Although BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, specifies that operators may contact the manufacturer for approval of a ferry flight to a location where the replacement of the NLG casing may be accomplished, this proposed AD does not contain such a provision. Any ferry flight must be approved by the FAA as specified in 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system.

Operators should note that, although the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, describe procedures for submitting certain reports to the manufacturer, this proposed AD would not require such reporting. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this

proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,705, or $65 per airplane, per inspection cycle.

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

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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–355–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the casing of the nose landing gear (NLG), which could result in failure of the NLG, and consequent reduced controllability of the airplane during takeoff and landing, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term ''alert service bulletin'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41-A32–079, Revision 2, dated April 28, 2003.

(2) The alert service bulletin refers to APPH Ltd. Service Bulletin AIR83586–32–18, Revision 1, dated October 2001, as an additional source of service information for the accomplishment of certain actions in BAE Systems (Operations) Limited Service Bulletin J41-A32–079, Revision 2.

(3) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 1, dated October 25, 2001, are acceptable for compliance with the corresponding actions required by this AD.

(4) Although the alert service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Inspections

(b) Within 7 days after the effective date of this AD, do a detailed inspection for cracking of the NLG casing, per the alert service bulletin. Then, at the compliance time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, do a fluorescent dye penetrant inspection for cracking of the NLG casing, per the alert service bulletin.

(1) If no cracking is found during the detailed inspection, within 30 days after accomplishment of the detailed inspection, do the fluorescent dye penetrant inspection.

(2) If any cracking is found during the detailed inspection, before further flight, do the fluorescent dye penetrant inspection.

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.''

Corrective Action

(c) If any cracking is found during any inspection per paragraph (b) of this AD, before further flight, do paragraph (c)(1) or (c)(2) of this AD, as applicable, per the alert service bulletin.

(1) If the cracking is within the limits specified in the alert service bulletin, repair the NLG casing.

(2) If the cracking is outside the limits specified in the alert service bulletin, replace the NLG casing with a new or serviceable NLG casing.

Note 2: Although the alert service bulletin specifies that operators may contact the manufacturer for approval of a ferry flight to a location where the replacement of the NLG casing may be accomplished, this AD requires any ferry flight to be approved by the FAA, as specified in 14 CFR part 39.

Repetitive Inspections

(d) Repeat the inspections in paragraph (b) of this AD, and the corrective action in paragraph (c) of this AD, as applicable, at intervals not to exceed 1,200 landings.

Note 3: There is no terminating action available at this time for the repetitive inspections required by paragraph (d) of this AD.

Parts Installation

(e) As of the effective date of this AD, no person may install an NLG casing on any airplane unless it has been inspected per paragraph (b) of this AD and found to be free of any cracking.

Alternative Methods of Compliance

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

Note 4: The subject of this AD is addressed in British airworthiness directive 004–10–2001.

Issued in Renton, Washington, on November 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28731 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 870, and 882

[Docket No. 2003N–0468]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following three class III preamendments devices: Indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, and the ocular plethysmograph. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the agency change the classification of any of the devices based on new information. This action implements certain statutory requirements.

DATES: Submit written or electronic comments by February 17, 2004. Submit requests for a change in classification by December 3, 2003. FDA intends that, if a final rule based on this proposed rule is issued, anyone who wishes to continue to market the device will need to submit a PMA within 90 days of the effective date of the final rule. Please see section XII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments or requests for a change in classification to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) established the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (see 21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The regulation, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. Section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification

of the device under section 513 of the act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease.

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that:

> [t]he thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

The SMDA added section 515(i) to the act requiring FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMAs and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMAs have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups.

Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are in very limited use. FDA's strategy is to call for PMAs for all group 1 devices in an omnibus section 515(b) of the act rulemaking action. In the **Federal Register** of September 7, 1995 (60 FR 46718), FDA implemented this strategy by proposing requiring the filing of a PMA or a notice of completion of a PDP for 43 class III preamendments devices. Subsequently, in the **Federal Register** of September 27, 1996 (61 FR 50704), FDA called for the filing of a PMA or a notice of completion of a PDP for 41 preamendments class III devices.

Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. In the **Federal Registers** of August 14, 1995 (60 FR 41986), and of June 13, 1997 (62 FR 32355), FDA issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information on these group 2 devices so that FDA can make a determination as to whether the devices should be reclassified.

Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to require the submission of PMAs for the 15 high priority devices in this group in accordance with the schedule set forth in the strategy document. In the **Federal Registers** of August 14, 1995 (60 FR 41984), and of June 13, 1997 (62 FR 32352), FDA issued an order under section 515(i) of the act for the 27 remaining group 3 devices requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III.

II. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days, after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with any additional information that FDA has discovered. Additional information can be found in the following proposed and final rules published in the **Federal Register** on these dates: Anesthesiology devices, 21 CFR part 868 (44 FR 63292, November 2, 1979, and 47 FR 31130, July 16, 1982); cardiovascular devices, 21 CFR part 870 (44 FR 13284, March 9, 1979 and 45 FR 7903, February 5, 1980); and neurological devices, 21 CFR part 882 (43 FR 55639, November 28, 1978, and 44 FR 51725, September 4, 1979).

IV. Devices Subject to This Proposal

A. Indwelling Blood Oxyhemoglobin Concentration Analyzer (21 CFR 868.1120)

1. Identification

An indwelling blood oxyhemoglobin concentration analyzer is a photo electric device used to measure, in vivo, the oxygen carrying capacity of hemoglobin in blood to aid in determining the patient's physiological status.

2. Summary of Data

The Anesthesiology Device Classification Panel recommended that the indwelling blood oxyhemoglobin concentration analyzer intended to measure, in vivo, the oxygen carrying capacity of hemoglobin in blood to aid in determining the patient's physiological status be classified into class III based on the lack of published clinical data relating to the safety of, and the problems associated with this device. FDA agreed and continues to agree with the panel's recommendation that the device be classified into class III.

3. Risks to Health

a. *Inappropriate therapy*—Inaccurate measurement of the blood oxyhemoglobin concentration may cause an incorrect diagnosis leading to inappropriate therapy.

b. *Thrombus or embolus formulation*—If the analyzer materials are incompatible with the blood, thrombus or embolus (clot) formation may result.

c. *Electrical shock*—If the device is not designed properly, the patient may receive an electrical shock.

d. *Vascular occlusion*—If the device sensor is too large, it may occlude the blood vessel in which it is placed, thus stopping the blood flow through that vessel.

B. Cardiopulmonary Bypass Pulsatile Flow Generator (21 CFR 870.4320)

1. Identification

A cardiopulmonary bypass pulsatile flow generator is an electrically and pneumatically operated device used to create pulsatile blood flow. The device is placed in a cardiopulmonary bypass circuit downstream from the oxygenator.

2. Summary of Data

The Cardiovascular Devices Classification Panel recommended that the cardiopulmonary bypass pulsatile flow be classified into class III because it is potentially hazardous to life or health even when properly used and because there are insufficient data to establish the safety and effectiveness of the device. FDA agreed and continues to agree with the panel's recommendation. The agency notes that the device has fallen into disuse and that the published data are not adequate to demonstrate the safety and effectiveness of the device.

3. Risks to Health

a. *Cardiac arrhythmias or electrical shock*—Excessive electrical leakage current can disturb the normal electrophysiology of the heart, leading to the onset of cardiac arrhythmias. Electrical leakage current can also cause electrical shock to a physician during a catheterization or surgical procedure and this may lead to iatrogenic complications.

b. *Blood damage*—If the materials, surface finish, cleanliness, or improper mechanical design of this device are inadequate, damage to the blood may result.

c. *Thromboembolism*—Inadequate blood compatibility of the materials used in the device, inadequate surface finish and cleanliness, or improper mechanical design may lead to potentially debilitating or fatal gas emboli to escape into the bloodstream.

C. Ocular Plethysmograph (21 CFR 882.1790)

1. Identification

An ocular plethysmograph is a device used to measure or detect volume changes in the eye produced by pulsations of the artery, to diagnose carotid artery occlusive disease (restrictions on blood flow in the carotid artery).

2. Summary of Data

The Neurological Device Classification Panel recommended that the ocular plethysmograph be classified into class III because it is used to detect the life-threatening condition that occurs when the brain does not receive adequate blood flow through a carotid artery.

3. Risks to Health

a. *Eye injury*—Excessive pressure can damage they eye.

b. *Misdiagnosis*—The device may misdiagnose the presence or absence of carotid artery occlusion because of a poor relationship between pulsatile arterial blood flow changes and the degree of occlusion.

c. *Infection*—Eye cups that are not sterile can cause infections.

V. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence ''obtained from well-controlled clinical studies, with detailed data,'' in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 CFR 860.7(c)(2)).

Applicants should submit any PMA in accordance with FDA's ''Premarket Approval (PMA) Manual.'' This manual is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850. This manual is also available on the Internet at *http://www.fda.gov/cdrh*.

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must

follow the procedures outlined in section 515(f) of the act. A PDP should provide: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the devices, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

Applicants should submit any PDP in accordance with FDA's ''PDP Comprehensive Outline With Attachments.'' This outline is available upon request from FDA, Center for Devices and Radiological Health, Office of Device Evaluation (HFZ–400), 9200 Corporate Blvd., Rockville, MD 20850. The outline and other PDP information is also available on the Internet at *http://www.fda.gov/cdrh/pdp*.

VII. Request for Comments With Data

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Division of Dockets Management (see **ADDRESSES**) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by January 20, 2004, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

IX. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because there have been no premarket submissions for these devices in the past 5 years, FDA has concluded that there is little or no interest in marketing these devices in the future. Therefore, the agency certifies that the proposed rule, if issued as a final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Proposed Effect Date

FDA is proposing that any final rule based on this proposal become effective 12 months after the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

List of Subjects

21 CFR Parts 868, 870, and 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 868, 870, and 882 be amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.1120 is amended by revising paragraph (c) to read as follows:

§ 868.1120 Indwelling blood oxyhemoglobin concentration analyzer.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication of the final rule in the **Federal Register**], for any indwelling blood oxyhemoglobin concentration analyzer that was in commercial distribution before May 28, 1976, or that has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to an indwelling blood oxyhemoglobin concentration analyzer that was in commercial distribution before May 28, 1976. Any other indwelling blood oxyhemoglobin concentration analyzer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 870—CARDIOVASCULAR DEVICES

3. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 870.4320 is amended by revising paragraph (c) to read as follows:

§ 870.4320 Cardiopulmonary bypass pulsatile flow generator.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication of the final rule in the **Federal Register**], for any cardiopulmonary bypass pulsatile flow generator that was in commercial distribution before May 28, 1976, or that has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to any cardiopulmonary bypass pulsatile flow generator that was in commercial distribution before May 28, 1976. Any other cardiopulmonary bypass pulsatile flow generator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

5. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 882.1790 is amended by revising paragraph (c) to read as follows:

§ 882.1790 Ocular plethysmograph.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication of the final rule in the **Federal Register**], for any ocular plethysmograph that was in commercial distribution before May 28, 1976, or that has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to any ocular plethysmograph that was in commercial distribution before May 28, 1976. Any other ocular plethysmograph shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: November 6, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–28741 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN No. 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of Negotiated Rulemaking Committee meetings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces the fifth and sixth meetings of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC). The Committee will review summary notes of the prior meeting, review draft regulatory text and continue to address substantive issues. The meetings will be open to the public.

DATES: The meetings will be on December 3, 4, 5, 2003, and January 5, 6, 7, 2004. The December meeting will begin each day at 8:30 a.m. The January meeting will begin at 1 p.m. on January 5th and at 8:30 a.m. the last two meeting days. Individuals with disabilities wishing to attend should contact Luz DelaCruz by telephone at 202–693–2020 or by fax at 202–693–1689 to obtain appropriate accommodations no later than Friday, November 21, 2003, for the, December meeting and no later than Monday, December 22, 2003, for the January meeting. Each C–DAC meeting is expected to last two and a half days.

ADDRESSES: The December meeting will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 and will be in conference room N–4437 B, C, D. The January meeting will be held at the UBC International Training Center, 6801 Placid Street, Las Vegas, NV 89119.

Written comments to the Committee may be submitted in any of three ways: by mail, by fax, or by email. Please include ''Docket No. S–030'' on all submissions.

By mail, submit three (3) copies to: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments that are 10 pages or fewer may be transmitted to the OSHA Docket Office at fax number (202) 693–1648.

Electronically, comments may be submitted through OSHA's Web page at *http://ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee, requesting comments and nominations for membership (Volume 67 of the **Federal Register**, page 46612). In subsequent notices the Department of Labor announced the establishment of the Committee (Volume 68 of the **Federal Register**, page 35172, June 12, 2003), requested comments on a list of proposed members (68 FR 9036, February 27, 2003), published a final membership list (68 FR 39877, July 3, 2003), announced the first meeting, (68 FR 39880, July 3, 2003), which was held July 30–August 1, 2003. The Agency published notices announcing the subsequent meetings.

II. Agenda

The Committee will review draft materials prepared by the Agency on issues discussed at prior meetings and address additional issues. While the pace of the discussions at the C–DAC meetings varies, C–DAC anticipates discussing the following items at the December meeting: wire rope, hoisting personnel, access to work zones, overhead and gantry cranes, and responsibility for site and ground conditions. At the January meeting, C–DAC anticipates discussing crane operations near electric power lines.

III. Anticipated Key Issues for Negotiation

OSHA anticipates that key issues to be addressed at future C–DAC meetings will include:

Being Discussed

1. Scope.
2. Definitions.
3. Assembly & Disassembly (including reeving/rigging).
4. Operation Procedures.
5. Signals.
6. Operator Qualifications, Training & Testing.
7. Inspections.
8. Modifications.
9. Keeping Clear of the Load.
10. Fall Protection.
a. Ladder access and cat walks.
b. Fall arrest.
11. Hoisting Personnel.
12. Machine Guarding.
13. Qualifications of Maintenance & Repair Workers.
14. Work Zone Control.

Additional Subjects (anticipated order):

1. Wire Rope.
2. Responsibility for environmental considerations, site conditions and ground conditions.
3. Safety Devices: fail-safe, warning, secondary brake system, and other safety-related devices/technology.
4. Operating Near Power Lines.
5. Floating Cranes; Cranes on Barges.
6. Overhead & Gantry Cranes.
7. Derricks.
8. Verification criteria for the structural adequacy of crane components and stability testing requirements.
9. Free Fall/Power Down.
10. Critical Lifts and Engineered Lifts.
11. Tower Cranes.
12. Operator Cab Criteria (roll over, visibility, overhead protection).
13. Limited Requirements for cranes with a rated capacity of 2,000 pounds or less.

IV. Public Participation

All interested parties are invited to attend these public meetings at the times and places indicated above. Note, however, that a government issued photo ID card (State or Federal) is required for entry into the Department of Labor building. No advance registration is required. The public must enter the Department of Labor for the December meeting through the 3rd and C Street, NW., entrance. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Luz DelaCruz by telephone at 202–693–2020 or by fax at 202–693–1689 to obtain appropriate accommodations no later than Friday, November 21, 2003, for the December meeting and no later than Monday, December 22, 2003, for the January meeting. Each C–DAC meeting is expected to last two and a half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 693–2350. Minutes will also be available on the OSHA Docket Web page: *http://dockets.osha.gov/*

The Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; telephone (617) 738 5320, fax (617) 738–6911.

Signed at Washington, DC, this 12th day of November, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–28767 Filed 11–17–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Narragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, RI

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a restricted area on the east side of the East Passage of Narragansett Bay around Coasters Harbor Island in the vicinity of Naval Station Newport. These regulations will enable the Navy to enhance safety and security around Coasters Harbor Island. It will create an area of separation between general navigation on the East Passage of Narragansett Bay and Naval Station Newport. The regulations will safeguard government personnel and property plus United States government contractor facilities located onboard Naval Station Newport from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of Navy use and security of the area.

DATES: Written comments must be submitted on or before December 18, 2003.

ADDRESSES: U. S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Michael Elliott, Corps of Engineers, New England District, at (978) 318–8131 or 1–800–343–4789.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR Part 334 by adding Section 334.82 which establishes a restricted area in the navigable waters immediately adjacent to Coasters Harbor Island and enclosing the island and mainland shoreline of Naval Station Newport from Coddington Point south to the Naval Hospital on the eastern side of the East Passage of Narragansett Bay in Newport, Rhode Island. To better protect the Naval War College and vessels and personnel stationed at the facility and the general public, the Navy, has requested the Corps of Engineers establish a Restricted Area. This will enable the Navy to keep persons and vessels out of the area at all times, except with the permission of the Commanding Officer Naval Station Newport, USN Newport, Rhode Island or his/her authorized representative.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small

businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

A preliminary environmental assessment has been prepared for this action. The Districts expects, due to the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.82 would be added to read as follows:

§ 334.82 Naragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.

(a) *The area.* The waters within a ''C-shaped'' area adjacent to and surrounding Coasters Harbor Island beginning at Coddington Point at latitude 41°31′24.0″ N, longitude 71°19′24.0″ W; thence west southwest to latitude 41°31′21.5″ N, longitude 71°19′45.0″ W; thence south southwest to latitude 41°31′04.2″ N, longitude 71°19′52.8″ W; thence due south to latitude 41°30′27.3″ N, longitude 71°19′52.8″ W; thence south southeast to 41°30′13.8″ N, longitude 71°19′42.0″ W; thence southeast to latitude 41°30′10.2″ N, longitude 71°19′32.6″ W; thence due east to latitude 41°30′10.2″ N, longitude 71°19′20.0″ W; thence northerly along the mainland shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and federal, local or state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

(2) [Reserved]

Dated: November 3, 2003.

Michael B. White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03–28706 Filed 11–17–03; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7587–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Del Monte Corporation (Oahu Plantation) Superfund Site from the National Priorities List; Correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of October 30, 2003 concerning request for comments on a Notice of Intent for Partial Deletion of the Del Monte Corporation (Oahu Plantation) Superfund Site from the National Priorities List. The document contained an error.

FOR FURTHER INFORMATION CONTACT: Janet Rosati, 415–972–3165.

Correction

In the **Federal Register** of October 30, 2003, in FR Doc. 03–27161, on page 61784, in the second column under ''IV. Site Background and History,'' correct the location of the Poamoho Section in relation to the Kunia Well to read:

The southern and northern boundaries of the Poamoho Section are located 3 miles north and 4.5 miles north, respectively, of the Kunia Well.

Dated: November 10, 2003.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 03–28786 Filed 11–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that, based on the October 10, 2003, decision in *Center for Biological Diversity* v. *Norton,* Civ. 01–409 TUC DCB (D. Ariz.), we are once again soliciting comment on our July 21, 2000, proposed rule (hereinafter referred to as the July 2000 proposal) to designate critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*) (65 FR 45336). We issued a final rule to the July 2000 proposal on February 1, 2001 (66 FR 8530). The final rule did not include some Forest Service and tribal lands that had been proposed for designation as critical habitat in the July 2000 proposal. This final rule is still in effect while we reconsider the proposed rule and issuance of a new final rule. Comments previously submitted on the July 2000 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

The Mexican spotted owl (owl) inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. The July 2000 proposal included

approximately 5.5 million hectares (ha) (13.5 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands. The final rule designated approximately 1.9 million ha (4.6 million ac) of critical habitat on Federal lands in Arizona, Colorado, New Mexico, and Utah.

DATES: We will accept comments until December 18, 2003.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505–346–2542.

3. You may send your comments by electronic mail (e-mail) to ''*R2FWE_AL@fws.gov.*'' For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

All comments and materials received, as well as supporting documentation used in preparation of this notice and the July 2000 proposed rule (65 FR 45336) will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, New Mexico State Administrator, New Mexico Ecological Services Field Office (telephone 505–761–4706, facsimile 505–346–2542).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Comments previously submitted on the July 2000 proposal need not be resubmitted, because they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule. It is our intent that any final action resulting from our July 2000 proposal be as accurate as possible.

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires us to consider the economic and other relevant impacts of specifying any area as critical habitat and authorizes us to exclude areas from designation upon finding that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, so long as excluding those areas will not result in the extinction of the species concerned. We will conduct a new analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *New Mexico Cattle Growers Ass'n* v. *USFWS,* 248 F.3d 1277 (10th Cir. 2001). We will also undertake a new National Environmental Policy Act (NEPA) analysis for this critical habitat designation. We intend to publish a notice of availability and reopening of the comment period in the **Federal Register** to accept public comments on the draft economic analysis and draft NEPA compliance documents.

We hereby solicit data and comments from the public on all aspects of the July 2000 proposal, including new scientific or commercial data and new data on economic and other impacts of the designation. We also are specifically seeking comment on the exclusion of tribal lands (see ''Designation of Critical Habitat on Tribal Lands'' section below). The final designation may differ from the July 2000 proposal based on new information received during the public comment period and the findings of the economic analysis and NEPA assessment. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Specific information on the amount and distribution of owl habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in or adjacent to the areas proposed, and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation, including any impacts on small entities;

(5) Economic and other values associated with the benefits of designating critical habitat for the owl, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs);

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(7) Conservation benefits to the owl from tribal or other management plans;

(8) The possible effects of a critical habitat designation on tribal or other lands; and

(9) The possible effects on tribal or other resources resulting from designation of critical habitat on nontribal lands.

If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods (*see* **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AT52'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346–2525.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you would like for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Recent Court Actions Related to Critical Habitat for the Owl

On March 13, 2000, the United States District Court for the District of New Mexico, (*Southwest Center for Biological Diversity* v. *Babbitt,* CIV 99–519 LFG/LCS–ACE), ordered us to propose critical habitat for the Mexican spotted owl within 4 months of the Court's order, and to complete and publish a final designation of critical habitat by January 15, 2001. On July 21, 2000, we published a proposal to designate critical habitat for the Mexican spotted owl on approximately 5.5 million hectares (ha) (13.5 million acres (ac)) in Arizona, Colorado, New Mexico, and Utah, mostly on Federal

lands (65 FR 45336). The initial comment period was open until September 19, 2000. During this 60-day comment period, we held 6 public hearings on the proposed rule. On October 20, 2000, we published a notice announcing the reopening of the comment period and the availability of the draft economic analysis and draft environmental assessment on the proposal to designate critical habitat for the owl (65 FR 63047). The final comment period was open until November 20, 2000. On February 1, 2001 (66 FR 8530), we published the final rule designating critical habitat for the owl. The final rule excluded all National Forest Service lands in Arizona and New Mexico and certain tribal lands and designated critical habitat on approximately 1.9 million ha (4.6 million ac). On August 27, 2001, the Center for Biological Diversity filed a complaint challenging our decision to exclude these lands from the final designation of critical habitat for the owl.

On January 13, 2003, the United States District Court for the District of Arizona, (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB), ruled that our final rule designating critical habitat for the owl violated the Act, as well as the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The Court ordered us to repropose critical habitat within 3 months and finalize within 6 months from the date of the order. The Court also stated that the current critical habitat designation for the owl (*i.e.*, that promulgated by 66 FR 8530 and codified at 50 CFR 17.95) shall remain in effect and be enforced until such time as we publish a new final designation of critical habitat for the owl. In a subsequent order, on February 18, 2003, the original deadlines were extended to allow until October 13, 2003, to repropose critical habitat for the owl and until April 13, 2004, to publish a new final designation of critical habitat.

On August 28, 2003, we filed a motion with the Court seeking a stay from the Court's January 13, 2003, order and an extension of time to complete the redesignation. A supporting declaration explained our budgetary difficulties for work on critical habitat designations in Fiscal Year 2003, and explained how we would completely exhaust our budget for critical habitat designations well before the end of the fiscal year due to other court orders with due dates preceding this one. On October 10, 2003, the Court ruled that it would permit a limited extension and ordered the parties to meet and confer within 15 days of the order to prepare a reasonable timeline for compliance with the January 13, 2003, order. The Court also indicated that a notice reopening the comment period on the July 2000 proposal is appropriate. On October 30, 2003, the parties submitted a Joint Proposed Timeline and Memorandum of Dispute to the Court. The parties agreed that this notice would solicit comment regarding all of the lands proposed for designation that were not included in the final designation. The parties did not agree to a schedule for completion of the final rule, and a variety of other matters. We anticipate that the Court will resolve these issues shortly.

Designation of Critical Habitat on Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. This is especially true where the habitat is occupied by the species and is therefore already subject to protection under the Act through section 7 consultation requirements. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

At this time, for the general reasons described above and the preliminary 4(b)(2) analysis below, as well as the specific mechanisms in place for each tribe whose lands are at issue, we anticipate that the 4(b)(2) analysis process will lead us to exclude all tribal lands in our final designation for the owl. We emphasize that this is only a tentative conclusion. Any exclusions in the final rule will be the result of a reanalysis, including consideration of all comments received and the findings of the economic analysis and NEPA assessment.

In making our final decision with regard to tribal lands, we will be considering several factors. At this time, we have received management plans from those tribes whose lands were excluded from the January 2001 final rule based on the definition of critical habitat, and we have been notified by the San Carlos Apache Tribe that their completed management plan is in the process of being submitted to the Tribal Council for approval. We anticipate receiving either a draft or final management plan shortly and will make it available to the public upon receipt. You may request copies of these by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section above). As discussed below, we will consider the benefits to the owl from these management plans. Additionally, we and the tribes currently have cooperative working relationships, that have enabled us to implement natural resource programs of mutual interest for the benefit of the owl and other threatened and endangered species. We will take into account the potential adverse impact to these current working relationships from designation of critical habitat on tribal lands.

We provide the following preliminary 4(b)(2) analysis so that we may obtain more meaningful comment on our anticipated exclusion of these tribal lands:

(1) Benefits of Inclusion

Few additional benefits would derive from including tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation in a critical habitat designation for the owl beyond what will be achieved through the implementation of their management plans. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal. We previously determined that the tribal management plans for the owl conform with the Mexican Spotted Owl Recovery Plan and provide a conservation benefit. Thus, we tentatively conclude that few regulatory benefits to the owl would be gained from a designation of critical habitat on these tribal lands.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, the tribes are already working with the Service to address the habitat needs of the species, and are fully aware of the conservation value of their lands. Thus, the educational benefits that might follow critical habitat designation, such as providing information on areas that are important for the long-term survival and conservation of the species, have already been realized. Further, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat.

(2) Benefits of Exclusion

The benefits of excluding the tribal lands of the San Carlos Apache, Mescalero Apache Tribe, and the Navajo Nation from designated critical habitat appear to be more significant. We tentatively conclude that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the tribes to develop and implement Tribal conservation and natural resource management plans for their lands and resources; (2) the establishment and maintenance of effective working relationships to promote the conservation of the owl and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the conservation needs of the species; and (4) by providing conservation benefits from the tribal management plans to the forest ecosystem upon which the owl depends which exceed those that would be provided by the designation of critical habitat.

In summary, we view each of the management plans as a continuance of cooperative and productive relationships that have and will continue to provide additional substantive conservation benefits to the owl and its habitat. The additional benefits would be less likely if critical habitat was designated because the tribes view critical habitat as an intrusion on their ability to manage their own lands and trust resources. We tentatively conclude that the benefits of including these tribal lands in critical habitat are small or nonexistent due to the protection afforded the owl through tribal management plans. These plans provide benefits to the owl through fire abatement projects, which reduce the risk of catastrophic fire, the primary threat to the owl; monitoring; protection of nest sites; and survey efforts. Subject to our reanalysis, after considering public comments and the economic impacts of the designation, we tentatively conclude that the benefits of excluding these areas from being designated as critical habitat for the owl are more significant than the benefits of including them, and include the continued implementation of tribal owl management plans and the continuance of our cooperative working relationships with these tribes for the mutual benefit of the owl and other threatened and endangered species.

Current Status of Critical Habitat for the Owl

As a result of the Court orders in *Center for Biological Diversity* v. *Norton,* we consider critical habitat to be proposed for the owl in those areas excluded from the final designation published on February 1, 2001 (66 FR 8530). Specifically, Forest Service lands in Arizona and New Mexico and tribal lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe were excluded from the final designation of critical habitat for the owl and are now considered to be proposed as critical habitat. Areas designated as critical habitat for the owl in the February 1, 2001, final designation remain in effect until critical habitat is refinalized, pursuant to the Court's order.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Activities on Federal lands that may affect the owl or its proposed critical habitat will require consultation with us pursuant to section 7 of the Act. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies may request formal conferencing on the July 2000 proposed critical habitat with respect to Forest Service lands in Arizona and New Mexico and the lands of the San Carlos Apache Tribe, the Navajo Nation, and the Mescalero Apache Tribe.

For areas that were included in the final critical habitat designation, section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, or require a Federal permit, license, or other authorization, or involve Federal funding.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–28483 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of Tungsten-Bronze-Iron as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby provides public notice that International Nontoxic Composites Corporation of Ontario, Canada, has applied for approval of Tungsten-Bronze-Iron shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the shot under the criteria set out in Tier 1 of the nontoxic shot approval procedures given at 50 CFR 20.134.

DATES: A comprehensive review of the Tier 1 information is to be concluded by January 20, 2004.

ADDRESSES: The International Nontoxic Composite Corporation application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia,

22203–1610. Comments on this notice may be submitted to the Division of Migratory Bird Management at 4401 North Fairfax Drive, MS MBSP–4107, Arlington, VA 22203–1610. Comments will become part of the Administrative Record for the review of the application. The public may review the record at the Division of Migratory Bird Management, Room 4091, 4501 North Fairfax Drive, Arlington, Virginia, 22203–1610.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, (703) 358–1714, or George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, (703) 358–1825.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, the Service has sought to identify types of shot for waterfowling that are not toxic to migratory birds or other wildlife when ingested. We have approved several types of shot as nontoxic and added them to the migratory bird hunting regulations in 50 CFR 20.21. We believe that compliance with the use of nontoxic shot will continue to increase with the approval and availability of other nontoxic shot types. Therefore, we continue to review all shot types submitted for approval as nontoxic.

International Nontoxic Composites has submitted its application with the counsel that it contained all of the information specified in 50 CAR 20.134 for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 time frame. The Service has determined that the application is complete, and has initiated a comprehensive review of the Tier 1 information. After the review, the Service will either publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive or publish a proposed rule for approval of the candidate shot. If the Tier 1 tests are inconclusive, the Notice of Review will indicate what other tests will be required before approval of the Tungsten-Bronze-Iron shot as nontoxic is again considered. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot.

Dated: November 4, 2003.

Matt Hogan,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–28688 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 222

Tuesday, November 18, 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

Submission for OMB Review; Comment Request

November 13, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ORIA_Submission@OMB.EOP.GOV,* or fax (202) 395–5806; and to Departmental Clearance Office, USDA OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Information Officer

Title: FY2003 and FY2004 Farm Shows Marketing and Grower Relations Assessment.

OMB Control Number: 0503–NEW.

Summary of Collection: The President's Management Agenda called upon the Department of Agriculture (USDA) to improve its online delivery of government services. In carrying out this mission, the Office of the Chief Information Officer (OCIO) seeks approval of information gathering activities that will provide key information about the impact of the eGovernment program on its key constituents: farmers, growers, and producers. It will also elucidate the programs current limitations and future challenges. OCIO will collect the information using a questionnaire.

Need and Use of the Information: OCIO will collect information to determine the principle causes of farmer use or non-use of eGovernment applications to date and provide guidance about future eGovernment functionality desired by farmers. If the information were not collected it would hinder USDA's ability to determine citizen preferences in designing applications.

Description of Respondents: Farms; Individuals or households; Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 2,500.

Farm Service Agency

Title: 7 CFR 764, Emergency Loan Program.

OMB Control Number: 0560–0159.

Summary of Collection: Section 302 (7 U.S.C. 1922) of the Consolidated Farm and Rural Development Act (CONACT) provides that ''the Secretary is authorized to make and insure loans under this title to farmers and ranchers * * *'' Section 339 (7 U.S.C. 1989) of the CONACT further provides that ''the Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making and insuring loans, security instruments and agreements, except as otherwise specified herein, and to make such delegations of authority as she deems necessary to carry out this title.'' The regulations at 7 CFR 764 establish the information collection for the Farm Service Agency (FSA) to make and service direct emergency loans. FSA must request certain documentation from its applicants in order to determine emergency loan eligibility, to determine if the operation is included in a designated disaster, and to determine if the applicant has suffered a qualifying production or physical loss.

Need and Use of the Information: The collected information is submitted by loan applicants and commercial lenders to FSA for loan officials to use in making eligibility and financial feasibility determinations as required by the CONACT. If the information were not collected, FSA would be unable to meet the congressionally mandated mission of the emergency loan program.

Description of Respondents: Farms; Business or other for-profit; Federal government; Individuals or households.

Number of Respondents: 2,958.

Frequency of Responses: Reporting and Other (em loan).

Total Burden Hours: 4,566.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.

OMB Control Number: 0584–0083.

Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement (272.2(a)(2)). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program

activity data for the preceding fiscal year). FNS will collect information using forms FNS 366A and FNS 366B.

Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information were not collected it would disrupt budget planning and delay appropriation distributions.

Description of Respondents: State, local or tribal government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 2,707.

Risk Management Agency

Title: Dairy Livestock Insurance Program.

OMB Control Number: 0563–NEW.

Summary of Collection: The Risk Management Agency (RMA) provides insurance programs to crop producers who wish to mitigate economic risk by having adequate levels of insurance protection against crop production losses due to flood, drought and other perils. RMA will do a study of the Dairy Livestock Insurance program by collecting information about the dairy industry, livestock risk and livestock risk management. This study is authorized under section 131 of the Agricultural Risk Protection Act of 2000 and under section 523(b) of the Federal Crop Insurance Act.

Need and Use of the Information: RMA will conduct a telephone survey of sample of dairy livestock producers in California, Kentucky, Pennsylvania and Wisconsin. The data collected from the survey will provide feedback by identifying frequency and severity of perils; fraud, waste and abuse preventive measures and other pertinent information needed to formulate policies and develop meaningful insurance plans.

Description of Respondents: Farms.

Number of Respondents: 3,200.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 1,494.

Agricultural Marketing Service

Title: Tart Cherries Grown in the states of MI, NY, PA, OR, UT, WA, and WI.

OMB Control Number: 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter- and intrastate commerce and improving returns to growers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. An 18 member Board comprised of producers, handlers and one public member with each member serving for a three-year term of office administer the Order.

Need and Use of the Information: Various forms were developed by the Board for persons to file required information relating to tart cherry inventories, shipments, diversions and other needed information to effectively carry out the requirements of the Order. The information collected is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 943.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 852.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–28760 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amounts of the Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses (Refined Sugar).

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the aggregate quantity of 1,156,195 metric tons raw value of sugar that may be entered under the tariff-rate quota (TRQ) provisions of Additional U.S. Note 5(a) of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year (FY) 2004. The following TRQ quantities are established for entry: 1,117,195 metric tons raw value of raw sugar under subheading 1701.11.10 of the HTS, and 39,000 metric tons raw value of certain sugars, syrups, and molasses under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard J. Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, AgStop 1021, South Building, U.S. Department of Agriculture, Washington, DC 20250–1021 or telephone (202) 720–2916, fax to (202) 720–0876, or email *Richard.Blabey@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of Additional U.S. Note 5 to chapter 17 of the HTS provides as follows: ''The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture, (' * * * the Secretary'), and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.''

These provisions of paragraph (a)(i) of Additional U.S. Note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total TRQ amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties for entry during the fiscal year beginning October 1. Allocations of the TRQ amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice: I hereby give notice, in accordance with paragraph (a)(i) of Additional U.S. Note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,117,195 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 2003, through September 30, 2004. This TRQ amount may be allocated among supplying

countries and areas by the United States Trade Representative.

I will issue Certificates of Quota Eligibility (CQEs) to allow Brazil, the Dominican Republic, and the Philippines to ship up to 25 percent of their respective initial country allocations at the low-tier tariff during each quarter of FY 2004. Argentina, Australia, Guatemala, and Peru will be allowed to ship up to 50 percent of their respective initial country allocations in the first 6 months of FY 2004. Unentered allocations, during any quarter or 6-month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to their respective country allocations may be entered at the low-tier tariff at any time during the fiscal year. I have further determined that an aggregate quantity of up to 39,000 metric tons raw value of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 2003 through September 30, 2004. I have further determined that out of this quantity of 39,000 metric tons, the quantity of 18,656 metric tons raw value is reserved for the importation of specialty sugars. These TRQ amounts may be allocated among supplying countries and areas by the United States Trade Representative.

Signed at Washington, DC the 4th day of November, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–28717 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–087–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of mangoes from the Republic of the Philippines.

DATES: We will consider all comments that we receive on or before January 20, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–087–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–087–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–087–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of mangoes from the Republic of the Philippines, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road, Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Mangoes from the Philippines.

OMB Number: 0579–0172.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) allow the importation of mangoes from Guimaras Island in the Republic of the Philippines into the United States under certain conditions. The regulations require the use of box marking to indicate the origin of the fruit, phytosanitary certificates to confirm that the fruit has been grown and treated in accordance with the regulations, and a trust fund agreement between the Republic of the Philippines Department of Agriculture and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service to cover the Agency's participation in the treatment and inspection activities in the Philippines that are required for the importation of mangoes.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Philippine plant protection officials; mango producers and packinghouses on Guimaras Island, Philippines.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 12th day of November, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28761 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Southeastern Fisheries Association, Tallahassee, Florida, for trade adjustment assistance. The group represents Florida shrimpers. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2002 and ending December 2002. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: November 5, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–28716 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspaper To Be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 12, 2003, of newspapers of record to be utilized for publishing notice of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions: Affecting National Forest System lands in more than one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the newspaper of record elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:
Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions:
Bankhead Ranger District: *Northwest Alabamian,* published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District:
The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District:
The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District:
The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District:
The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District:
Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:
The Times, published daily in Gainesville, GA.

District Ranger Decisions: Armuchee Ranger District:
Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA.

Toccoa Ranger District:
The News Observer (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.
Brasstown Ranger District:
North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.
Towns County Herald, (secondary) published weekly (Thursday) in Hiwassee, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.
Tallulah Ranger District:
Clayton Tribune, published weekly (Thursday) in Clayton, GA.
Chattooga Ranger District:
Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.
Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA.
White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA.
The Dahlonega Nuggett, (secondary published weekly (Thursday) in Dahlonega, GA.
Cohutta Ranger District:
Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA.
Oconee Ranger District:
Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
Knoxville News Sentinel, published daily in Knoxville, TN.
District Ranger Decisions:
Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN.
Tellico Ranger District:
Monroe County Advocate, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.
Nolichucky-Unaka Ranger District:
Greeneville Sun, published daily (except Sunday) in Greeneville, TN.
Watauga Ranger District:
Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:
Lexington Herald-Leader, published daily in Lexington, KY.
District Ranger Decisions:
Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY.
Stanton Ranger District:
The Clay City Times, published weekly (Thursday) in Stanton, KY.
London Ranger District:
The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.
Somerset Ranger District:
Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY.
Stearns Ranger District:
McCreary County Record, published weekly (Tuesday) in Whitley City, KY.
Redbird Ranger District:
Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

National Forest in Florida, Florida

Forest Supervisor Decisions:
The Tallahassee Democrat, published daily in Tallahassee, FL.
District Ranger Decisions: Apalachicola Ranger District:
Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.
Lake George Ranger District:
The Ocala Star Banner, published daily in Ocala, FL.
Osceola Ranger District:
The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.
Seminole Ranger District:
The Daily Commercial, published daily in Leesburg, FL.
Wakulla Ranger District:
The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:
The State, published daily in Columbia, SC.
District Ranger Decisions:
Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday), Newberry, SC.
Andrew Pickens Ranger District:
The Daily Journal, published daily in Seneca, SC.
Lone Cane Ranger District:
The State, published daily in Columbia, SC.
Wambaw Ranger District:
Post and Courier, published daily in Charleston, SC.
Witherbee Ranger District:
Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions:
Roanoke Times, published daily in Roanoke, VA.
District Ranger Decisions: Lee Ranger District:
Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Warm Springs Ranger District:
The Recorder, published weekly (Thursday) in Monterey, VA.
James River Ranger District:
Virginian Review, published daily (except Sunday) in Covington, VA.
Deerfield Ranger District:
Daily News Leader, published daily in Staunton, VA.
Dry River Ranger District:
Daily News Record, published daily (except Sunday) in Harrisonburg, VA.
New River Ranger District:
Roanoke Times, published daily in Roanoke, VA.
Glenwood/Pedlar Ranger District:
Roanoke Times, published daily in Roanoke, VA.
New Castle Ranger District:
Roanoke Times, published daily in Roanoke, VA.
Mount Rogers National Recreation Area:
Bristol Herald Courier, published daily in Bristol, VA.
Clinch Ranger District:
Kingsport-Times News, published daily in Kingsport, TN.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:
The Town Talk, published daily in Alexandria, LA.
District Ranger Decisions: Caney Ranger District:
Minden Press Herald, (newspaper of record) published daily in Minden, LA.
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District:
The Town Talk, published daily in Alexandria, LA.
Calcasieu Ranger District:
The Town Talk, (newspaper of record) published daily in Alexandria, LA.
The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA.
Kisatchie Ranger District:
Natchitoches Times, published daily (Tuesday through Friday and on Sunday) in Natchitoches, LA.
Winn Ranger District:
Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions:

The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:
Clarion-Ledger, published daily in Jackson, MS.
District Ranger Decisions: Bienville Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
De Soto Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Holly Springs Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District:
Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:
The Asheville Citizen-Times, published daily in Asheville, NC.
District Ranger Decisions: Appalachian Ranger District:
The Asheville Citizen-Times, published daily in Asheville, NC.
Cheoah Ranger District:
Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District:
The Sun Journal, published daily (except Saturday) in New Bern, NC.
Grandfather Ranger District:
McDowell News, published daily in Marion, NC.
Highlands Ranger District:
The Highlander, published weekly (mid May–mid Nov. Tues. & Fri. mid Nov–mid May, Tues. only) in Highlands, NC.
Pisgah Ranger District:
The Asheville Citizen-Times, published daily in Asheville, NC.
Tusquitee Ranger District:
Cherokee Scout, published weekly (Wednesday) in Murphy, NC.
Uwharrie Ranger District:
Montgomery Herald, published weekly (Wednesday) in Troy, NC.
Wayah Ranger District:
The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
District Ranger Decisions: Caddo Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Fourche Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Jessieville/Winona Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Mena/Oden Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Poteau/Cold Springs Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Womble Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak)
Tulsa World, published daily in Tulsa, OK.

Ozark-St. Francis National Forest, Arkansas

Forest Supervisor Decisions:
The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
District Ranger Decisions:
Sylamore Ranger District:
Stone County Leader, published weekly (Wednesday) in Mountain View, AR.
Buffalo Ranger District:
Newton County Times, published weekly in Jasper, AR.
Bayou Ranger District:
The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Pleasant Hill Ranger District:
Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.
Boston Mountain Ranger District:
Southwest Times Record, published daily in Fort Smith, AR.
Magazine Ranger District:
Southwest Times Record, published daily in Fort Smith, AR.
St. Francis National Forest:
The Daily World, published daily (Sunday through Friday) in Helena, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:
The Lufkin Daily News, published daily in Lufkin, TX.
District Ranger Decisions: Angelina National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Davy Crockett National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Sabine National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Sam Houston National Forest:
The Courier, published daily in Conroe, TX.
Caddo & LBJ National Grasslands:
Denton Record-Chronicle, published daily in Denton, TX.

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 12, 2003, of newspapers of record to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Francis Marion & Sumter National Forest, South Carolina

District Ranger Decisions: *Newspaper change:*
Long Cane Ranger District:
The State, published daily in Columbia, SC.

Ozark-St. Francis National Forest, Arkansas

District Ranger Decisions: Publication day of the week change:
Sylamore Ranger District:
Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

Dated: November 10, 2003.

Roberta A. Moltzen,

Deputy Regional Forester.

[FR Doc. 03–28722 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hoosier National Forest, Indiana, German Ridge Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Hoosier National Forest is revising the expected date for a draft environmental impact statement. The prior notice concerning this project appeared in the **Federal Register** on August 30, 2002 (Volume 67, Number 169, pages 55773–55775). The Hoosier National Forest is preparing an environmental impact statement (EIS) to disclose the environmental consequences of a vegetation restoration project. The EIS

will address the potential environmental impacts of replacing pine plantations in the German Ridge area of Perry County, Indiana with native hardwood communities.

DATES: The draft environmental impact statement is expected February 2004, and the final environmental impact statement is expected July 2004.

FOR FURTHER INFORMATION CONTACT: Ron Ellis, NEPA coordinator, Hoosier National Forest, USDA Forest Service; telephone; (812) 275–5987. Address: 811 Constitution Avenue; Bedford IN 47421. The original scoping document can also be viewed at the Hoosier National Forest Web page at *http://www.fs.fed.us/r9/hoosier/project_docs/scoping/german_ridge restoration.htm.*

Responsible Official

Kenneth G. Day, Forest Supervisor; Hoosier National Forest; 811 Constitution Avenue; Bedford, Indiana 47421.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 4, 2003.

Kenneth G. Day,

Forest Supervisor.

[FR Doc. 03–28782 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service—Tennessee

Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standard Wetland Creation (Code 658) to account for improved technology. This practice standard can be used in conservation systems designed to mitigate for wetland conversions.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277–2531. Copies of the practice standard will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standard.

Dated: November 6, 2003.

James W. Ford,

State Conservationist.

[FR Doc. 03–28792 Filed 11–17–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Data Sharing Activity

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of Economic Analysis (BEA) will provide to the Bureau of the Census (Census Bureau) data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999 for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we provided the opportunity for public comment on this data-sharing action (*see* the July 7, 2003 edition of the **Federal Register** (68 FR 40241)). Through the use of these shared data, the Census Bureau will augment its existing research and development (R&D)-related data collected in the Survey of Industrial Research and Development, which is funded by the National Science Foundation (NSF). The Census Bureau will also identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys and improve its survey sample frames. The NSF will be provided non-confidential aggregate public use data and reports that have cleared BEA and Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: BEA will make the data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999 available to the Census Bureau on November 18, 2003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this program should be directed to Ned Howenstine, Chief, Research Branch, International Investment Division, Bureau of Economic Analysis (BE–50), Washington, DC 20230, by phone on (202) 606–9845 or by fax (202) 606–5318.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Title V) and the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 United States Code (U.S.C.) 3101–3108) allow BEA and the Census Bureau to share certain business data for statistical purposes exclusively. Section 524(d) of the CIPSEA required a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

On July 7, 2003 (68 FR 40241), BEA published in the **Federal Register** a notice of this proposed data-sharing activity and request for comment on the subject. BEA did not receive any public comments.

Shared Data

BEA will provide the Census Bureau with data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999. The Census Bureau also will share data from the 1997 and 1999 Surveys of Industrial Research and Development with BEA. The Census Bureau issued separate notices addressing this issue (68 FR 33094, June 2, 2003 and 68 FR 54201, September 16, 2003).

BEA will provide the Census Bureau with only those data items necessary to link records from the two benchmark surveys with records from the Census Bureau's Surveys of Industrial Research and Development. The Census Bureau will use these data for statistical purposes exclusively. Through record linkage, the Census Bureau will

augment its existing R&D-related data, identify data quality issues arising from reporting differences in the Census Bureau and BEA surveys, and improve its survey sample frames.

Statistical Purposes for the Shared Data

The data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999 are used to estimate expenditures on research and development performed by U.S. affiliates of foreign companies and U.S. parent companies, R&D employment, and other statistics on the financial structure and operations of these companies. Statistics from the Benchmark Survey of Foreign Direct Investment in the United States—1997 were published in *Foreign Direct Investment in the United States: Final Results From the 1997 Benchmark Survey;* statistics from the Benchmark Survey of U.S. Direct Investment Abroad—1999 will be published in *U.S. Direct Investment Abroad: Final Results From the 1999 Benchmark Survey* (forthcoming). All data are collected under sections 3101–3108, of Title 22 U.S.C.

Data Access and Confidentiality

Title 22, U.S.C. 3104 protects the confidentiality of these data. These data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. Any results of this research are subject to BEA disclosure protection. All Census Bureau employees with access to these data will become BEA Special Sworn Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will become BEA Special Sworn Employees. No confidential data will be provided to the NSF. To further safeguard the confidentiality of these data, BEA will conduct an Information Technology security review of the Census Bureau prior to the commencement of the project. Any results of this research are subject to BEA disclosure protection.

Dated: November 4, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 03–28612 Filed 11–17–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ralph Michel

In the Matter of: Ralph Michel, Vice President, Omega Engineering, Inc., One Omega Drive, Stamford, Connecticut 06907, Respondent.

Order

The Bureau of Industry and Security, United States Department of Commerce (''BIS''), having notified Ralph Michel of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''Act''),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2003)) (''Regulations''),[2] based on allegations in a proposed charging letter issued to Ralph Michael that alleged that Ralph Michel committed six violations of the Regulations. Specifically, the charges are:

1. *Four Violations of § 764.2(a): Prohibited Conduct:* Ralph Michel made or caused to be made a series of exports of laboratory equipment, including shipments on or about June 25, 1997, July 3, 1997, July 11, 1997, and July 16, 1997, that were routed from Omega Engineering, Inc. (Omega) in the United States to Pakistan via Newport Electronics GmbH (Newport) in Germany. This laboratory equipment included load cells, load bolts, strain gauges and related parts. By that means, Ralph Michel conducted or caused to be conducted the same export transaction for which the Department of Commerce had denied authorization in response to an export license application previously submitted by Omega. On or about April 9, 1997, the Department of Commerce denied export license application Z097230, which Omega had submitted for the export of certain laboratory equipment from the United States to Pakistan. Omega appealed this denial pursuant to Section 756.2 of the Regulations. On or about May 5, 1997, the Under Secretary of Commerce for Export Administration sustained the denial of the license application. In making or causing to be made the shipments on the dates specified above, Ralph Michel engaged in conduct prohibited by or contrary to the denial of export license application Z097230 and the Under Secretary's upholding of that denial, thereby committing four violations of Section 764.2(a) of the Regulations.

2. *One Violation of 15 CFR 764.2(e): Acting With Acknowledge of a Violation:* In making or causing to be made the above-described exports, Ralph Michel acted with knowledge that such exports were prohibited by or contrary to the Department of Commerce's denial of Omega's export license application and the Under Secretary's sustaining of that denial, as described above. By selling and transferring the items described above with knowledge that such violation was about to occur and was intended to occur in connection with the items, Ralph Michel violated Section 764.2(e) of the Regulations.

3. *One Violation of 15 CFR 764.2(b): Causing False Statement Violations:* On or above June 25, July 3, July 11, and July 16, 1997, and in connection with each of the shipments described above, Omega, through an employee, submitted or caused to be submitted a Shipper's Export Declaration (SED). Ralph Michel knew that items ultimately destined for Pakistan were included in such shipments to Newport in Germany, and then were to be shipped from Germany to Pakistan. Each such SED falsely identified Newport as the ultimate consignee and Germany as the country of ultimate destination. It also stated that the export qualified for export pursuant to ''NLR'' (no license required), when in fact a license was required for this export, as the Department of Commerce had previously advised Omega. Ralph Michel knew of the applicable license requirement and of the actual ultimate destination and ultimate consignee, but

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[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During the period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2003). The current version of the Regulations govern the procedural aspects of this case. The charged violations occurred in 1997. The Regulations governing the charged violations are found in the 1997 version of the Code of Federal Regulations (15 CFR parts 730–774 (1997)).

caused, induced, and permitted the submission of the SED's containing these false statements. By so doing, Ralph Michel violated Section 764.2(b) of the Regulations.

BIS and Ralph Michel having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that for a period of five years from the date of this Order, Ralph Michel, and when acting for or on behalf of him, his representatives, agents, assigns or employees (''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') that is subject to the Regulations and that is exported or to be exported from the Untied States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to Pakistan;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to Pakistan that is subject to the Regulations, or in any other activity subject to the Regulations that involves Pakistan.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations to Pakistan;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Pakistan, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States to Pakistan;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Pakistan; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Pakistan and that is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Pakistan. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, cooperation, or business organization related to Ralph Michel by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of November 2003.

Julie L. Myers,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–28795 Filed 11–17–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Omega Engineering, Inc.

In the Matter of: Omega Engineering, Inc., One Omega Drive, Stamford, Connecticut 06907, Respondent.

Order

The Bureau of Industry and Security, United States Department of Commerce (''BIS''), having notified Omega Engineering, Inc. (''Omega'') of its intention to initiate an administrative proceeding against it pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000) (''Act''),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2003)) (''Regulations''),[2] based on allegations in a proposed charging letter issued to Omega that alleged that Omega committed 17 violations of the Regulations. Specifically, the charges are:

1. *Four Violations of § 764.2(a): Prohibited Conduct:* Omega made a series of exports of laboratory equipment, including shipments on or about June 25, 1997, July 3, 1997, July 11, 1997, and July 16, 1997, that were routed from the United States to Pakistan via Newport Electronics GmbH (Newport) in Germany. This laboratory equipment included load cells, load bolts, strain gauges and related parts. By that means, Omega, through its Vice President Ralph Michel (Michel), conducted or caused to be conducted the same export transaction for which the Department of Commerce had denied authorization in response to an export license application previously submitted by Omega. On or about April 9, 1997, the Department of Commerce denied export license application Z097230, which Omega had submitted for the export of certain laboratory equipment from the United States to Pakistan. Omega appealed this denial pursuant to Section 756.2 of the Regulations. On or about May 5, 1997, the Under Secretary of Commerce for Export Administration sustained the

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2003). The current version of the Regulations govern the procedural aspects of this case. The charged violations occurred in 1997. The Regulations governing the charged violations are found in the 1997 version of the Code of Federal Regulations (15 CFR parts 730–774 (1997)).

denial of the license application. In making the shipments on the dates specified above, Omega engaged in conduct prohibited by or contrary to the denial of export license application Z097230 and the Under Secretary's upholding of that denial, thereby committing four violations of Section 764.2(a) of the Regulations.

2. *Twelve Violations of 15 CFR 764.2(g): False Statements:* On or about June 25, July 3, July 11, and July 16, 1997, Omega, through an employee, submitted or caused to be submitted a Shipper's Export Declaration (SED) regarding one of the shipments described above. Michel knew that items ultimately destined for Pakistan were included in such shipments to Newport in Germany, and then were to be shipped from Germany to Pakistan. Each SED falsely identified Newport as the ultimate consignee and Germany as the country of ultimate destination. Each SED also stated that the export qualified for export pursuant to ''NLR'' (no license required), when in fact a license was required, as the Department of Commerce had previously advised Omega. By submitting or causing to be submitted these four SED's, each of which contained these three false statements, Omega committed twelve violations of Section 764.2(g) of the Regulations.

3. *One Violation of 15 CFR 764.2(e): Acting With Knowledge of a Violation:* In making or causing to be made the above-described exports, Omega, through Michel, acted with knowledge that such exports were prohibited by or contrary to the Department of Commerce's denial of its export license application and the Under Secretary's sustaining of that denial, as described above. By selling and transferring the items described above with knowledge that such violation was about to occur and was intended to occur in connection with the items, Omega violated Section 764.2(e) of the Regulations.

BIS and Omega having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It Is Therefore Ordered:

First, that Omega shall pay a civil penalty of $187,000 to the U.S. Department of Commerce, as follows: $87,000 to be paid within 30 days from the date of entry of the Order; $50,000 to be paid within one year from the date of entry of the Order; and $50,000 to be paid within two years from the date of entry of the Order. At its option, Omega may accelerate this payment schedule. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Omega will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Omega. Accordingly, if Omega should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Omega's export privileges for a period of one year from the date of entry of this Order.

Fourth, that for a period of five years from the date of this Order, Omega Engineering, Inc., One Omega Drive, Stamford, Connecticut, 06907, its successors or assigns, and, when acting for or on behalf of Omega, its officers, representatives, agents or employees ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to Pakistan;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to Pakistan, or in any other activity subject to the Regulations that involves Pakistan; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to Pakistan that is subject to the Regulations, or in any other activity subject to the Regulations that involves Pakistan.

Fifth, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported to Pakistan:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations to Pakistan;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Pakistan, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States to Pakistan;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Pakistan; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Pakistan and that is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Pakistan. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Omega by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Seventh, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Eighth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of November 2003.

Julie L. Myers,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–28796 Filed 11–17–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Director of the National Institute of Standards and Technology announces that the National Construction Safety Team Federal Advisory Committee will meet on December 2–3, 2003.

DATES: The meeting will convene on December 2, 2003, at 8 a.m. and will adjourn at 2 p.m. on December 3, 2003. Members of the public wishing to attend the meeting must notify Stephen Cauffman by close of business on Friday, November 28, 2003, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, telephone (301) 975–6051, fax (301) 975–6122, or via e-mail at *stephen.cauffman@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, December 2, 2003, from 8 a.m. to 6 p.m. and Wednesday, December 3, 2003, from 8 a.m. to 2 p.m. at NIST headquarters in Gaithersburg, Maryland.

The Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7310). The Committee is composed of ten members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *http://www.nist.gov/ncst.* The purpose of this meeting is to discuss the requirements of the NCST Act, how it is being implemented by NIST, and to provide an update on the two investigations that NIST is currently conducting under the Act: the World Trade Center (WTC) Investigation and the Rhode Island Nightclub Investigation. The agenda will also include a discussion on the NCST Advisory Committee Annual Report to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the Internet at *http://www.nist.gov/ncst.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, NCST Act implementation, the WTC Investigation, or the Rhode Island Investigation are invited to request a place on the agenda. On December 2, 2003, approximately one hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, via fax at (301) 975–6122, or electronically via e-mail to *ncstac@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Friday, November 28, 2003, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: November 10, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–28705 Filed 11–17–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 20, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Mr. David Beckner, J–3733, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6221.

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 J–3733 at (703) 767–3624.

Title, Associated Form; and OMB Number: Defense Logistics Agency Supplier Survey.

Needs and Uses: The Defense Logistics Agency (DLA) is transforming its distribution business practices. It is developing an automated system that will give it visibility on the location and movement of material originating at Government and contractor locations alike, and the ability to use that information for Corporate-wide planning and management. DLA needs to understand corresponding business practices of segments of the contractor community. The survey information will be used by DLA to help determine the extent to which shipments from contractor locations can be integrated into DLA's distribution practices.

Affected Public: A sample of the Supply Contractors doing business with the Defense Logistics Agency.

Annual Burden Hours: 200.

Number of Respondents: 200.

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour (60 minutes).

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals/businesses who supply material to the Defense Logistics Agency in direct support of customer requirements or to be placed into stock for future requirements. The survey will seek information concerning each contractors' demographics, order management practices, shipping practices, costs and pricing, and utilization of technology. Participation in the survey will be voluntary.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28691 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 18, 2003.

Title, Form, and OMB Number: Application Forms, Naval Reserve Officers Training Corps Scholarship Program; OMB Number 0703–0026.

Type of Request: Reinstatement.

Number of Respondents: 14,000.

Responses Per Respondent: 1.

Annual Responses: 14,000.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 56,000.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for a Naval Reserve Officers Training Corps (NROTC) scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR , 1251 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28692 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 18, 2003.

Title, Form, and OMB Number: Application Forms, Naval Reserve Officers Training Corps Scholarship Program; OMB Number 0703–0026.

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Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28693 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 18, 2003.

Title Form, and OMB Number: Application Procedures for United

States Naval Academy; OMB Number 0703–0036.

Type of Request: Reinstatement.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Annual Responses: 10,000.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 40,000.

Needs and Uses: This collection of information is necessary to determine the eligibility and evaluate overall competitive standing of candidates for appointment to the United States Naval Academy. An analysis of the information collected is made by the Admissions Board during the process in order to gauge the qualifications of individual candidates.

Affected Public: Individuals or Households, Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28694 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Advisory Board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts was scheduled as follows:

DATES: October 28 and 29, 2003 (9 a.m.–5 p.m.).

ADDRESSES: Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Mr. Jack. A. McNulty, Director, Defense Intelligence Agency Advisory Board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts, Washington, DC 20340–1328; telephone (202) 231–3507.

SUPPLEMENTARY INFORMATION: The entire meeting was devoted to the discussion of classified information as defined in Section 552(c)(I), Title 5 of the U.S. Code, and therefore was closed to the public. The Board received briefings on and discussed several current critical intelligence issues and advised the Director, Defense Intelligence Agency, on related scientific and technical matters.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28697 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Patriot Systems Performance will meet in closed session on February 10–11, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the recent performance of the Patriot System in Operation Iraqi Freedom from deployment through use across the threat spectrum.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess logistical, doctrine, training, personnel management, operational and material performance; identify those lessons learned which are applicable to the development of the Medium Extended Air Defense System (MEADS); and assess the current planned spiral development of the Patriot to ensure early incorporation of fixes discovered in the lessons learned process.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28695 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Enabling Joint Force Capabilities will tentatively meet in closed session on December 16, 2003, at Joint Forces Command, Norfolk, VA. This Task Force will review the current state of assigned responsibilities and accountability for joint capabilities to quickly bring combat forces together and focus them on joint objectives across a wide spectrum of possible contingencies and will help identify unfilled needs and areas where assigned responsibility and accountability calls for further clarification and/or organizational arrangements.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will identify specific characteristics and examples of organizations that could be capable of accepting responsibility and accountability for delivering the capability with needed responsiveness, and will recommend further steps to strengthen the joint structure ability to quickly integrate service-provided force capabilities into effective joint forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this defense Science Board Task

Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28696 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and reforming of the tests.

DATES: December 11, 2003, from 8 a.m. to 5 p.m., and December 12, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at The Pine Inn, Ocean Avenue and Lincoln, Carmel, California 93921.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than November 21, 2003.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSF Federal Register Liaison officer, Department of Defense.

[FR Doc. 03–28699 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to finalize the annual report. The meeting is open to the public, subject to the availability of space.

DATES: November 20 and 21, 2003, 8:30 a.m.–5 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Shannon Thaeler, USN, DACOWITS, 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than 5 p.m., November 18, 2003. Oral presentation by members of the public will be permitted only on Thursday, November 20, 2003, from 4:45 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) copy of the presentation by 5 p.m., November 18, 2003 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on November 18, 2003.

Meeting Agenda:

Thursday, November 20, 2003

Welcome & Administrative Remarks
Committee Time—Finalizing Annual Report
Reserve Utilization Brief
Female Officer Retention Briefs
Committee Time—Topics for FY04
Public Forum (4:45 p.m.–5 p.m.)

Friday, November 21, 2003

Committee Time—Topics for FY04
Committee Time—Process Review/Lessons Learned

Note: Exact order may vary.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28698 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 18, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 7, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF SAFPA D

SYSTEM NAME:

Your Guardians of Freedom User Database (March 6, 2003, 68 FR 10704).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete and replace entry with 'Destroy when the individual requests removal from the system, or one year from the last date the record was modified by the individual, whichever is sooner.

* * * * *

F035 AF SAFPA D

SYSTEM NAME:

Your Guardians of Freedom User Database (March 6, 2003, 68 FR 10704).

SYSTEM LOCATION:

Doe Anderson Interactive, 620 W. Main Street, Louisville, KY 40202–2933.

Subsystems of the main system may be located at the Public Affairs Offices at Air Force Bases, Air National Guard or Air Force Reserve or similar installations to which an individual is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force personnel, Air Force Reserve Command personnel, and Air National Guard personnel who voluntarily submit information into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, to name, current grade, marital status, local address, name and address of spouse, parents or guardians, photographs, name and address of civilian employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

To provide an outreach program for commanders to communicate with families, civilian employers, educators, news media, and political and community leaders about the extensive role of airmen in the war on terrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To civilian employers of Air Reserve Component personnel for purposes of providing information regarding employer and employee rights, benefits, and obligations under the Uniformed Services Employment and Reemployment Rights Act; to accord appropriate public recognition to the employer for his or her support of Air Force programs and employee participation therein; and to provide information regarding Air Force and Air Reserve Component issues, plans, and operations and/or the involvement of employees in such activities.

To family members, political and community leaders, and the news media for purposes of providing information regarding Air Force and Air Reserve Component issues, plans, and operations and/or the involvement of Air Force personnel, active or reserve, in such activities.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Retrieved by individual's name, unit and address.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Destroy when the individual requests removal from the system, or one year from the last date the record was modified by the individual, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Your Guardians of Freedom, Office of the Secretary of the Air Force, Public Affairs, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should use the web-based login screen to contact system administrators by e-mail, or should address written requests to Your Guardians of Freedom, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690.

Inquiries about a subsystem should be addressed to the Public Affairs Officer at the base or installation of the individual's assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should log into the system using the username and password they received when they initially registered. The web-based login screen provides information to retrieve forgotten passwords.

Individuals can also address written inquiries to Your Guardians of Freedom, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690, or the installation Public Affairs Officer. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

Individuals may log into the system using the username and password they received when they initially registered and alter the information about them contained in the system.

Otherwise, the Air Force rules for accessing records and contesting contents and appealing initial determinations are published in Air Force Instruction 37–132, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–28703 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is amending a system of records

notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendment is required to alert the users of this system of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the ''Routine Use'' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on December 18, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record (May 31, 2002, 67 FR 38068).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'Records of family member exceptional medical and/or educational needs, medical summaries, individual educational program plans, general supportive documentation and correspondence'.

* * * * *

PURPOSE(S):

Delete from entry 'exceptional educational and/or medical needs of family members'. Add 'secondary' before 'prevention', and add 'assessment and intervention' before 'activities'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to the end of the entry ''**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

RETRIEVABILITY:

Add to end of entry 'or by other identification number'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Hardcopy/Paper Records: Substantiated Maltreatment Incidents and Unsubstantiated-Unresolved Maltreatment Incidents: Destroy as a family group 25 years after the end of the calendar year in which the case review committee determination was made or treatment ends.

Unsubstantiated/Did Not Occur Maltreatment Incidents: Destroy 2 years after the end of the calendar year in which the case review committee determination was made.

Secondary Prevention Records: Destroy 2 years after the end of the calendar year in which the prevention service was provided.

Electronic Data in FAP Databases: Maintained indefinitely in archived or active status.''

* * * * *

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record.

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Surgeon General, 110 Luke Avenue, Room 400, Bolling Air Force Base, Washington, DC 20332–7050;

Air Force Medical Operations Agency, Family Advocacy Program, 2664 Flight Nurse, Building 801, Brooks City-Base, TX 78235–5135;

Major Command Surgeons' offices; Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD beneficiaries who are entitled to care at Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of suspected and established cases of family maltreatment, assessments and evaluations, investigative reports, check lists, family advocacy case management team minutes and reports, follow-up and evaluative reports, correspondence, and any other supportive data gathered relevant to individual family advocacy program cases. Secondary prevention records, assessment and survey instruments, service plans, and chronological documentation data. Prevention contact activity files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 40–301, Air Force Family Advocacy Program, and E.O. 9397 (SSN).

PURPOSE(S):

To document the activities of the Family Advocacy Program as they relate to allegations of and substantiated cases of family maltreatment, secondary prevention assessments and intervention activities, assessment and survey activities; compile database for statistical analysis, tracking, and reporting; evaluate program effectiveness and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To any member of the family in whose sponsor's name the file is maintained, in furtherance of treating any member of the family.

To the Attorney General of the United States or his authorized representatives

in connection with litigation, or other matters under the direct jurisdiction of the Department of Justice.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

To officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies and relating to the coordination of family advocacy programs, medical care and research concerning family maltreatment and neglect.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

To the Federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or when involved in child abuse or neglect.

To authorized surveying bodies for professional certification and accreditations.

To the individual organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with applicable statutes.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system, except as stipulated in the 'NOTE' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, in computers, and on computer output products.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the sponsor or the sponsor's spouse or by other identification number.

SAFEGUARDS:

Records are maintained in various types of lockable filing equipment in monitored or controlled access lockable rooms or areas. Records are accessible only to authorized personnel that are properly screened and trained. Computer terminals are located in supervised areas with access controlled by password or other user-code systems. Records on computer storage devices are protected by computer system security software or physically stored in lockable filing equipment.

RETENTION AND DISPOSAL:

HARDCOPY/PAPER RECORDS:

Substantiated Maltreatment Incidents and Unsubstantiated-Unresolved Maltreatment Incidents: Destroy as a family group 25 years after the end of the calendar year in which the case review committee determination was made or treatment ends.

Unsubstantiated/Did Not Occur Maltreatment Incidents: Destroy 2 years after the end of the calendar year in which the case review committee determination was made.

Secondary Prevention Records: Destroy 2 years after the end of the calendar year in which the prevention service was provided.

Electronic Data in FAP Databases: 'Maintained indefinitely in archived or active status.'

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Air Force Medical Operations Agency, Family Advocacy Division, 2664 Flight Nurse, Building 801, Brooks City-Base, TX 78235–5135, Major Command Surgeons, and Commanders of Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains information on them should address inquiries to the Family Advocacy Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should include the names and Social Security Numbers of the individual and sponsor concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking to access their records in this system should address requests to the Patient Affairs Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should include the names and Social Security Numbers of the individual and sponsor concerned.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, reports from physicians and other medical department personnel; reports and information from other sources including educational institutions, medical institutions, law

enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. 03–28700 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendment is required to alert the users of this system of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on December 18, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG O

SYSTEM NAME:

United States Air Force Master Radiation Exposure Registry (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace 'Regulation 161–28, Personnel Dosimetry Program' with 'Instruction 48–148, Ionizing Radiation Protection, Air Force Instruction 40–201, Managing Radioactive Materials in the USAF, and Air Force Instruction 48–125, The U.S. Air Force Personnel Dosimetry Program''.

PURPOSE(S):

Replace 'USAF Occupational and Environmental Health Laboratory (OEHL)' with '311th Human Systems Wing's Air Force Institute for Environment Safety, and Occupational Health Risk Analysis (AFIERA), Radiation Surveillance Division (SDR)'.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

STORAGE:

Replace entry with ''Maintained in computers and on computer output products.''

* * * * *

F044 AF SG O

SYSTEM NAME:

United States Air Force Master Radiation Exposure Registry.

SYSTEM LOCATION:

United States Air Force Institute for Environment, Safety, and Occupational Health Risk Analysis (AFIERA), Brooks City-Base, TX 78235–5103; Air Force medical centers, hospitals and clinics; Air Force operating locations and installations using sources of ionizing radiation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel currently enrolled in or having been monitored under the USAF's Personnel Dosimetry Program or on whom the Air Force has performed a bioassay for radioactive materials since 1960. This includes Air Force military and civilian employees; military and civilian employees of other Components and the Department of Defense; and some employees of other federal agencies and civilian contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal radiation dosimetry (film badge or thermoluminescent dosimeter) results in monthly and lifetime cumulative periods and results of bioassays for radioactive materials in the body.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 20.401(a) and (c), 10 Chapter I, Code of Federal Regulations (10 CFR

20.401(a)(c)) as directed by E.O. 12196, 29 CFR 1910.96(b)(2)(iii), (n) and (o), implemented by Air Force Instruction 48–148, Ionizing Radiation Protection, Air Force Instruction 40–201, Managing Radioactive Materials in the USAF, and Air Force Instruction 48–125, The U.S. Air Force Personnel Dosimetry Program and the USAF Master Radiation Exposure Registry.

PURPOSE(S):

311th Human Systems Wing's Air Force Institute for Environment Safety, and Occupational Health Risk Analysis (AFIERA), Radiation Surveillance Division (SDR): To maintain a cumulative record of occupational exposure to ionizing radiation on each radiation worker monitored under the USAF's personnel dosimetry program as required by Public Law; to provide a copy of an individual's record to any future employer of that individual who makes a proper request for it as provided for by law; to provide individuals a copy of their Air Force occupational radiation exposure history; to provide information about an individual's ionizing radiation exposure history to medical personnel responsible for radiation safety and the individual's health care, and the individual's supervisor; to provide information about radiation exposures resulting from radiation accidents or incidents to authorized investigators of such events and the Nuclear Regulatory Commission (NRC) or Department of Labor, Occupational Safety and Health Administration (DOL/OSHA); for use in epidemiological and statistical studies to determine the effectiveness of Air Force-wide radiological health programs, trends in exposure doses, exposure experiences of selected occupational groups and similar studies.

Medical personnel:—To determine the requirements for occupational physical examinations and assess whether an individual's medical condition may be related to his or her radiation exposure; to use in formulating recommendations to supervisors on requirements to remove or limit an individual from further work with ionizing radiation sources; to determine the need for investigation of workplace environments for abnormal radiation exposure conditions; to formulate recommendations for modifications of facilities, equipment or procedures to limit workers' radiation exposures to as low as reasonably achievable; to assist in developing worker education programs on local radiation hazards.

Employees' supervisors:—To determine whether employee can continue to work in a given radiation environment; to determine radiation exposures to personnel associated with a given task; to implement improvements in facilities, equipment, or procedures to reduce worker exposures to as low as reasonably achievable; to assist in local worker education about occupational radiation hazards.

Individuals:—To be aware of their lifetime radiation exposures and aid in making personal judgments about the occupational radiation hazards of their environment and in fulfilling their individual responsibilities for radiation safety.

Investigators of radiation accidents or incidents:—To assist in determining the possible causes of such an event and recommended measures to prevent recurrence; to determine the severity of the event and possible long term consequences to individuals involved in it or future similar events.

NRC and DOL/OSHA:—To use in formulating or enforcement of national policies and regulations for protection of workers from ionizing radiation sources in their occupational environment.

Future employers:—To use as the basis for continuing the lifetime cumulative record on individuals as required by Public Law and to use for all purposes for which the current employer uses these records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records Air Force Institute for Environment, Safety, and Occupational Health Risk Analysis (AFIERA/SDRD) are accessed by custodian of the record system and persons responsible for servicing the record system in performance of their official duties and are controlled by computer system software and personnel screening. Records at installations are accessed by medical personnel in performance of their official duties. Records are controlled by personnel screening.

RETENTION AND DISPOSAL:

Records are permanent at Air Force Institute for Environment, Safety, and Occupational Health Risk Analysis (AFIERA/SDRD). Latest cumulative history entered in an individual's medical record is retained for the life of the medical record. Records retained by installation medical personnel and supervisors for one year, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Radiation Protection Division, Air Force Medical Service Agency, 110 Luke Avenue, Room 405, Bolling AFB DC 20032–7050.

NOTIFICATION PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Radiation Protection Division, (AFMOA/SGZR), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20032–7050, or visit the Air Force Institute for Environment Safety, and Occupational Health Risk Analysis (AFIERA)/SDRD, 2350 Gillingham Drive, Brooks City-Base, TX 78235–5103.

Information required for identification of an individual record is: Full name, Social Security Number and Service Number(s) if different from Social Security Number. If the request is from other than the individual to whom the records pertain, a signed authorization by the individual to release the records to the requester is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Radiation Protection Division, (AFMOA/SGZR), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20032–7050, or visit the Air Force Institute for Environment Safety, and Occupational Health Risk Analysis (AFIERA)/SDRD, 2350 Gillingham Drive, Brooks City-Base, TX 78235–5103.

Information required for identification of an individual record is: Full name, Social Security Number and Service Number(s) if different from Social Security Number. If the request is from other than the individual to whom the records pertain, a signed authorization by the individual to release the records to the requester is required.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers; other components and civilian or government agencies responsible for conducting a radiation protection program and personnel dosimetry at an individual's workplace; and medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–28701 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Real Property Master Plan (RPMP) and Real Property Exchange (RPX) for the Parks Reserve Forces Training area (RFTA), Dublin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army's Installation Management Agency-Army Reserve Division (IMA–ARD) and Parks RFTA intend to prepare an EIS in support of the installation's RPMP and RPX. The RPMP presents a plan for rapid redevelopment of the cantonment area of Parks RFTA, with 182 acres of the current cantonment area being transferred out of Federal ownership under the RPX program. These actions have the potential to significantly affect certain natural, economic, social, and cultural resources in and adjacent to Parks RFTA. The EIS will evaluate the environmental impacts associated with the implementation of the RPMP/FPX and other alternatives, while also developing mitigation measures when appropriate.

ADDRESSES: Interested parties desiring additional information regarding this proposed project or to be placed on a project information mailing list can contact: Installation Management Agency—Army Reserve Division (SFIM–AR/Mr. Borchardt), 1401 Deshler Street, Fort McPherson, Georgia 30330–2000.

FOR FURTHER INFORMATION CONTACT: Installation Management Agency—Army Reserve Division (SFIM–AR/Mr. Borchardt), 1401 Deshler Street, Fort McPherson, Georgia 30330–2000 or by sending electronic mail to *david.borchardt.JMWaller@usarc-emh2.army.mil.*

SUPPLEMENTARY INFORMATION: The strategic location of the Parks RFTA in northern California makes it the most accessible and economic training resource for over 250 Reserve component units supporting over 20,000 Reservists. The installation supports combined training space and facilities for the Armed Forces, and other Federal and local agencies in the north central part of California. The IMA–ARD has prepared an RPMP that proposed a program for revitalizing the installation infrastructure and accelerating facility replacements.

The RPMP for Parks RFTA was completed in November 2002. The RPMP proposes approximately 1.3 million square feet of new buildings/structures and approximately 370,000 square feet of parking area. The majority of the existing structures on Parks RFTA were intended to be temporary and are inadequate for today's military personnel and lifestyle. The RPMP proposes the modernization of facilities to meet the troop training requirements and amenities that are consistent to the private sector.

Alternatives to be considered include (1) no action, (2) incremental modernization utilizing existing cantonment area, and (3) accelerated modernization in a redeveloped compacted cantonment area. These alternatives will be refined and other alternatives may be developed further during the preparation of the EIS as a result of public input and environmental analysis. the study area for the environmental analysis will be the Cantonment Area and a small portion of the Training Area of Parks RFTA and the surrounding community.

Issues: Parks RFTA contains approximately 2,500 acres of which approximately 500 acres are located in the Cantonment Area. The majority of the RPMP involves the redevelopment of the Cantonment area. The EIS will analyze potential impacts to resources, which are expected to include natural resources, cultural resources, archaeological resources, human health and safety, socioeconomics, land use changes, air/noise/traffic impacts, and other impacts that will be identified through the scoping process and other analysis in the EIS.

Scoping: A public scoping meeting will be held in close proximity to Parks RFTA. The date and time of these meetings will be announced in the general media and will be at times and locations convenient to the public. A scoping letter will be sent to interested organizations, individuals, Federal, state, and local agencies inviting attendance. To be considered in the EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

Dated: November 7, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA(I&E).

[FR Doc. 03–28723 Filed 11–17–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) for the Construction of the Thomas Jefferson Hall (Cadet Library—Learning Center) and Other Cadet Zone Activities Within the United States Military Academy (USMA), West Point, NY

AGENCY: U.S. Military Academy, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the FEIS that assesses the potential environmental impacts of the design, construction and operation of the new Cadet Library—Learning Center, identified as Thomas Jefferson Hall, and other Cadet Zone Activities at USMA.

DATES: The waiting period for the FEIS will end 30 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the FEIS or submit comments, contact Douglas R. Cubbison, Acting NEPA Coordinator, Directorate of Housing & Public Works, Engineering Plans & Services Division, Building 667 Ruger Road, West Point, New York 10996.

FOR FURTHER INFORMATION CONTACT: Douglas R. Cubbison at (845) 938–3522, by fax at (845) 938–2529, by e-mail at *yd5777@exmail.usma.army.mil,* or by mail at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this FEIS is to analyze significant issues and information relevant to environmental concerns regarding the proposed and alternative actions related to academic modernization activities within the Cadet Zone at the USMA. Modernization activities include the construction of a new library and learning center, potential demolition of structures that no longer contribute to the USMA mission, and construction of new facilities to support the USMA mission and modernize the Cadet Zone. These actions are needed to fulfill current and future needs for library and learning space necessary to maintain university accreditation and academic excellence, and to update existing cadet facilities.

Potential consequences of the proposed project identified during interagency and public scoping meetings, and addressed in this FEIS, include impacts to cultural and visual resources. In particular, these concerns involve the existing significant viewsheds of the Cadet Zone and the configuration and orientation of the new library on the preferred site. The Army anticipates that cultural and visual resources will be affected by the implementation of the proposed action. The Army has responded to these concerns by modifying elements of the proposed action, including the massing of the proposed building and architectural features of its facades.

Secondary and cumulative impacts also were evaluated for the proposed and alternative actions, as well as ongoing and recently completed projects and recently foreseeable future actions. The analyses indicate that adverse environmental consequences, such as the alteration of existing significant viewsheds, would be balanced by beneficial effects, such as the modernization of the Cadet Zone, the continuation of USMA accreditation and an enhanced academic environment.

The Army has considered agency concerns and responded by incorporating recommended changes in the design of the proposed action. Potential adverse environmental impacts to cultural and visual resources will be properly mitigated through a Programmatic Agreement with the New York Office of Parks, Recreation and Historic Preservation, the Advisory Council on Historic Preservation and the National Park Service.

Comments on the FEIS received during the 30-day waiting period will be considered in preparation of the Record of Decision. Copies of the FEIS are available for review at the following libraries: USMA Post Library (Building 622), USMA Cadet Library (Building 757), Cold Spring Public Library, Highland Falls Public Library, Cornwall Public Library and Garrison Public Library.

Dated: November 6, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&IE).

[FR Doc. 03–28724 Filed 11–17–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 18, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001a TAPC

SYSTEM NAME:

Office Visitor/Commercial Solicitor Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0001a U.S. AHRC'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'Social Security Number' and 'and the results of a law enforcement records check.'

* * * * *

A0001a US AHRC

SYSTEM NAME:

Office Visitor/Commercial Solicitor Files.

SYSTEM LOCATION:

Segments may be maintained at Headquarters, Department of the Army, staff, field operating agencies, commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visitors to Army installations/activities and/or commercial solicitors who represent an individual, firm, corporation, academic institution, or other enterprise involved in official or business transactions with the Department of the Army and/or its elements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, name and address of firm represented, person/office visited, purpose of visit, status of individual as regards past or present affiliation with the Department of Defense, and the results of a law enforcement records check.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, Army Regulation 210, Commercial

Solicitation on Army Installations; and E.O. 9397 (SSN).

PURPOSE(S):

To provide information to officials of the Army responsible for monitoring/controlling visitor's/solicitor's status and determining purpose of visit so as to preclude conflict of interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of visitor/solicitor.

SAFEGUARDS:

Records are maintained in file cabinets with access limited to officials having need therefore.

RETENTION AND DISPOSAL:

Retained for one year after which records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander/supervisor maintaining the information. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander/supervisor maintaining the information. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing (September 8, 2003, 68 FR 52908).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Add to the end of the entry 'and test scores'.

* * * * *

PURPOSE(S):

Add a new sentence to the entry 'The data is used on a continuing basis for the purpose of regeneration of scores and reclassification, score quality evaluation, and miscellaneous research activities.'

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing.

SYSTEM LOCATION:

U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STP), as well as civilian applicants to the military services and active duty Service members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, address, telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to ASVAB subtests, and test scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–222, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports. The data is used on a continuing basis for the purpose of regeneration of scores and reclassification, score quality evaluation, and miscellaneous research activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the disposition, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 03–28702 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding new records being maintained and the purpose(s) therefore, and revises two existing routine uses.

DATES: This action will be effective without further notice on December 18, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS-B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 28, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S335.01 CAH

SYSTEM NAME:

Training and Employee Development Record System (August 3, 1999, 64 FR 42101).

CHANGES:

SYSTEM IDENTIFIER:

Delete 'CAH' from entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'home addresses' and replace with 'geographic and electronic home addresses''. Add a new sentence to read 'Electronic records may contain computer logon and password data.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. chapter 41, The Government Employees Training Act; 10 U.S.C. 1701 *et seq.*, Defense Acquisition Workforce Improvement Act; E.O. 9397 (SSN); E.O. 11348, Providing for the further training of Government employees, as amended by E.O. 12107, Relating to the Civil Service Commission and labor-management in the Federal Service; 5 CFR part 410, Office of Personnel Management-Training.''

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is used to manage and administer training and development programs; to identify individual training needs; to screen and select candidates for training; and for reporting and financial forecasting, tracking, monitoring, assessing, and payment reconciliation purposes. Statistical data, with all personal identifiers removed, are used to compare hours and costs allocated to training among different DLA activities and different types of employees.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace fourth paragraph with 'To Federal, state, and local agencies and oversight entities to track, manage, and report on mandatory training requirements and certifications.'

In the fifth paragraph, delete 'and evaluation purposes' and replace with 'evaluation, and payment reconciliation purposes.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Automated records may be retrieved by Social Security Number, name, logon identification, password, or by a combination of these data elements. Manual records are retrieved by employee last name or Social Security Number.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in physical and electronic areas accessible only to DLA personnel who must use the records to perform assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other

administrative procedures. The electronic records are deployed on accredited systems with access restricted by the use of login, password, and/or card swipe protocols. The web-based files are encrypted in accordance with approved information assurance protocols. Employees are warned through screen log-on protocols and periodic briefings of the consequences of improper access or use of the data. In addition, users are trained to lock or shutdown their workstations when leaving the work area. During non-duty hours, records are secured in access-controlled buildings, offices, cabinets or computer systems.'

* * * * *

RETENTION AND DISPOSAL:

Replace the semicolon after 'sooner' with a period and strike the remainder of the sentence. Add as a new last sentence 'Employee agreements, individual training plans, progress reports, and similar records used in intern, upward mobility, career management, and similar developmental training programs are destroyed 1 year after employee has completed the program.'

* * * * *

S335.01

SYSTEM NAME:

Training and Employee Development Record System.

SYSTEM LOCATION:

The master file is maintained by the Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000. Subsets of the master file are maintained by DLA Support Services, Business Management Office, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; the DLA field level activities; and individual supervisors. Official mailing addresses of the DLA field level activities are published as an appendix to DLA's compilation of systems of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) employees and individuals receiving training funded or sponsored by DLA. Department of Defense military personnel and non-appropriated fund personnel may be included in the system at some DLA locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date of birth, geographic and electronic home addresses; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre- and post-test results, student progress data, start and completion dates, course descriptions, funding sources and costs, student goals, long- and short-term training needs, and related data. The files may contain employee agreements and details on personnel actions taken with respect to individuals receiving apprentice or on-the-job training. Where training is required for professional licenses, certification, or recertification, the file may include proficiency data in one or more skill areas. Electronic records may contain computer logon and password data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapter 41, The Government Employees Training Act; 10 U.S.C. 1701 *et seq.*, Defense Acquisition Workforce Improvement Act; E.O. 9397 (SSN); E.O. 11348, Providing for the further training of Government employees, as amended by E.O. 12107, Relating to the Civil Service Commission and labor-management in the Federal Service; 5 CFR part 410, Office of Personnel Management-Training.

PURPOSE(S):

Information is used to manage and administer training and development programs; to identify individual training needs; to screen and select candidates for training; and for reporting and financial forecasting, tracking, monitoring, assessing, and payment reconciliation purposes. Statistical data, with all personal identifiers removed, are used to compare hours and costs allocated to training among different DLA activities and different types of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs for inspecting, surveying, auditing, or evaluating apprentice or on-the-job training programs.

To the Department of Labor for inspecting, surveying, auditing, or evaluating apprentice training programs and other programs under its jurisdiction.

To Federal, State, and local agencies and oversight entities to track, manage, and report on mandatory training requirements and certifications.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, evaluation, and payment reconciliation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

To Federal oversight agencies for investigating, reviewing, resolving, negotiating, settling, or hearing complaints, grievances, or other matters under its cognizance.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Automated records may be retrieved by Social Security Number, name, logon identification, password, or by a combination of these data elements. Manual records are retrieved by employee last name or Social Security Number.

SAFEGUARDS:

Records are maintained in physical and electronic areas accessible only to DLA personnel who must use the records to perform assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures. The electronic records are deployed on accredited systems with access restricted by the use of login, password, and/or card swipe protocols. The Web-based files are encrypted in accordance with approved information assurance protocols. Employees are warned through screen log-on protocols and periodic briefings of the consequences of improper access or use of the data. In addition, users are trained to lock or shutdown their workstations when leaving the work area. During non-duty hours, records are secured in access-controlled buildings, offices, cabinets or computer systems.

RETENTION AND DISPOSAL:

Training files are destroyed when 5 years old or when superseded, whichever is sooner. Employee agreements, individual training plans, progress reports, and similar records used in intern, upward mobility, career management, and similar developmental training programs are

destroyed 1 year after employee has completed the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000 and Staff Director, Business Management Office, DLA Support Services, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 2635, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the master system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221. Current DLA employees may determine whether information about themselves is contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in the master system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officers at the DLA field level activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices. Current DLA employees may gain access to data contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subject, current and past supervisors, personnel offices, educational and training facilities, and licensing or certifying entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–28704 Filed 11–17–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 18, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 13, 2003.

Angela C. Arrington, Leader,

Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Reading First Annual Performance Report (KA).

Frequency:

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 1100.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2329. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to AXT at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–28778 Filed 11–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting, revised.

SUMMARY: This notice sets forth the schedule and agenda of the upcoming meeting of the President's Board of Advisors on Historically Black Colleges

and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend. PLEASE NOTE THAT the opportunity for public comment at the meeting is between 2 and 3 p.m. on December 10.

DATES: Wednesday, December 10, 2003.

Time: 9 a.m.–3 p.m.

ADDRESSES: The Board will meet in Nashville, TN at the Radisson Hotel Opryland, 2401 Music Valley Drive, Phone: (615)–231–8804 Fax: (615)–889–6328.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Director to the Counselor to the Secretary for the White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities (Board) is established under Executive Order 13256, dated February 12, 2002. The Board is established (a) To report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCU's to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

The purposes of the meeting are to report on the status of recommendations made by the Board at the May 28, 2003 meeting; to discuss reauthorization of the Higher Education Act and plans and reports from the Private Sector Initiative; to consider the Board's annual report to the President on the results of the participation of HBCUs in Federal programs; and to address other critical issues facing HBCUs.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893 no later than November 26, 2003. We will attempt to meet requests for acommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on December 10, 2003, between 2 p.m.–3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Monday, December 1, 2003.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 9 a.m. to 5 p.m.

Dated: November 12, 2003.

Rod Paige,

Secretary of Education, U.S. Department of Education.

[FR Doc. 03–28768 Filed 11–17–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

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), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, December 4, 2003; 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L107, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and approval of recommendations and comments on the Building 771/774 Groundwater Collection System Proposed Action Memorandum.
2. Presentation and discussion on modification to the Building 371 Decommissioning Operations Plan.
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on November 13, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–28765 Filed 11–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Annual Report of Closed Advisory Committee Meetings; Availability

In accordance with section 10(d) of the Federal Advisory Committee Act

(FACA), Public Law 92–463, and section 102–3.175(c) of the General Services Administration's (GSA) Final Rule on Federal Advisory Committee Management, the Department of Energy's 2002 Annual Report of Closed Advisory Committee meetings has been issued. The report covers three closed meetings of the National Nuclear Security Administration Advisory Committee held October 19–20, 2001, in McLean, Virginia; February 12–13, 2002 (Partially Closed), in McLean, Virginia; and May 14–15, 2002, in McLean, Virginia.

The report is available for public review and copying at the Department of Energy's 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. For further information contact me at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585.

Issued in Washington, DC, on November 12, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–28764 Filed 11–17–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7587–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement and stipulation modifying the settlement agreement, to address two lawsuits filed by Association of Irritated Residents and Medical Advocates for Healthy Air (''Petitioners''): No. 03–71973 (9th Circuit). Pursuant to section 307(b)(1) of the Clean Air Act Petitioners filed petitions for review of EPA documents implementing a federal title V permitting program for agricultural sources in California and setting guidelines for permit applications for major sources due to diesel engine emissions. Under the terms of the proposed settlement agreement EPA would withdraw these documents from EPA's Region 9 Web site and publish revised national guidance that is non-binding. The proposed stipulation would remove this last requirement.

DATES: Written comments on the proposed stipulation of settlement agreement must be received by December 18, 2003.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0002, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Apple Chapman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–7606.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement and Stipulation Modifying the Settlement Agreement

Petitioners allege that the title V permit application guidance EPA published for agricultural sources in California excludes, without rulemaking, certain agricultural major sources of air pollution from regulation.

The settlement agreement provides that: (1) EPA will file an Unopposed Motion for Voluntary Remand with the Ninth Circuit Court of Appeals and that within five days of a court order granting this motion, EPA will withdraw the guidance documents and remove them from the Region 9 website; (2) EPA will publish new, nonbinding nationwide guidance that better explains a facility's ''potential to emit'' (PTE) in the context of diesel engines used as agricultural pumps; and (3) EPA will publish a notice establishing a new Title V permit application deadline of November 13, 2003, for sources in California that are subject to Title V regulation under the new PTE guidance.

On September 22, 2003, the Governor of the State of California signed legislation removing the agricultural exemption that prevented full approval of 34 Title V programs in the State. On October 8, 2003, the EPA proposed to approve this revision to 34 Title V programs in the State of California. In light of the expected final action to approve the State program revisions, the Parties have agreed that EPA PTE guidance is not required at this time. Therefore, the stipulation amending the settlement agreement would remove EPA's obligation to publish new, nonbinding guidance. Final action of the proposal to approve the revisions to the 34 California Title V programs will also terminate EPA's implementation of a part 71 Federal operating permit program for State-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts. Accordingly, the stipulation also removes the requirement that EPA establish a new Title V permit application deadline of November 13, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement and stipulation amending the agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement and stipulation if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement and stipulation should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement and Stipulation

A. How Can I Get a Copy of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0002 which contains a copy of the settlement agreement and stipulation amending the agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., 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, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 12, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–28785 Filed 11–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7587–4]

State Program Requirements; Approval of Application by Maine To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval of the Maine Pollutant Discharge Elimination System under CWA.

SUMMARY: On October 31, 2003 the Regional Administrator for the Environmental Protection Agency, Region I, approved the application by the State of Maine to administer and enforce the Maine Pollutant Discharge Elimination System (MEPDES) Program for the territories of the Penobscot Nation and the Passamaquoddy Tribe, with the exception of facilities with discharges that qualify as internal tribal matters. The authority to approve state programs is provided to EPA in section 402(b) of the Clean Water Act (CWA). The state will administer the approved program through its Department of Environmental Protection (DEP), subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program previously administered by EPA in these territories. The program is a partial program to the extent described in the section of this Notice entitled ''Scope of the MEPDES Program.'' In making its decision, EPA considered and addressed all comments and issues raised during the public comment period relating to jurisdiction over the territories of the Penobscot Nation and Passamaquoddy Tribe and related issues.

DATES: Pursuant to 40 CFR 123.61(c), the MEPDES program was approved and became effective on October 31, 2003.

ADDRESSES: Questions or requests for additional information may be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114–2023; or Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 04333–0017.

Copies of documents Maine has submitted in support of its program approval and copies of the comments received on this request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1 Congress Street—Suite 1100, Boston, MA 02114–2023, 617–918–1990 or 1–888–372–5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Stephen Silva at the address listed above or by calling (617) 918–1561 or Dennis Merrill at the address listed above or by calling (207) 287–7788. Part of the state's program submission and supporting documentation is available electronically at the following Internet address: *http://www.maine.gov/dep/blwq/delegation/index.htm.*

SUPPLEMENTARY INFORMATION: On January 12, 2001, EPA approved Maine to implement the MEPDES program in all the areas of the state outside Indian country. 66 FR 12791 (February 28, 2001). In that approval, EPA took no action on the state's program application as it applied to the territories and lands of the four federally recognized Indian tribes in Maine, including disputed territories. Id. at 12792–93. In our approval on October 31, 2003, EPA authorized the state to implement the MEPDES program as it applies to the territories of the Penobscot Nation and the Passamaquoddy Tribe, with the

exception of facilities with discharges that qualify as internal tribal matters.[1]

A. Scope of the MEPDES Program

Maine's MEPDES program is essentially unchanged since EPA approved it in January 12, 2001. For the territories of the Penobscot Nation and Passamaquoddy Tribe, EPA is approving Maine to administer both the NPDES permit program covering point source dischargers and the pretreatment program covering industrial sources discharging to publicly owned treatment works in these territories, except as to facilities with discharges that qualify as internal tribal matters. Maine is not being approved at this time to regulate cooling water intake structures under CWA section 316(b). Thus the state is being approved to operate a partial permit program, pursuant to CWA section 402(n)(4). The state program will cover all NPDES permitting responsibilities other than under CWA section 316(b). Sources with cooling water intake structures subject to CWA section 316(b) will need to obtain permits from the state regulating their discharges (including thermal discharges regulated under CWA section 316(a)), but also will need to obtain supplemental permits from the EPA regulating their cooling water intake structures pursuant to CWA section 316(b).[2]

The state is not applying for authorization for the municipal sewage sludge program at this time. EPA will continue to regulate sewage sludge in these territories in accordance with CWA section 405 and 40 CFR part 503.

Pursuant to CWA section 402(d), EPA retains the right to object to MEPDES permits proposed by MEDEP, and if the objections are not resolved, to issue the permits itself. EPA also will retain jurisdiction over all NPDES permits it has issued in these territories until MEDEP reissues them as MEPDES permits. As part of operating the approved program, the Maine DEP generally will have responsibility for enforcement, except as to facilities whose operations qualify as internal tribal matters. However, EPA will retain its full statutory enforcement authorities under CWA sections 308, 309, 402(i) and 504. Thus, EPA may continue to bring federal enforcement action under the CWA in response to any violation of the CWA in these territories. In particular, if the EPA determines that the state has not taken timely enforcement action against a violator and/or that its action has not been appropriate, the EPA may take its own enforcement action in Maine.

B. Responsiveness Summary

With no substantial changes to Maine's approved program, the only question remaining in this action involves the state's assertion of jurisdiction in these tribes' territories and issues related to the state, tribal, and federal authority in these areas. EPA received a large number of comments on these issues. In the section below entitled ''Overview of EPA's Rationale,'' EPA generally addresses the major comments we received. A detailed response to comments document, which more specifically addresses all the relevant comments we received, is part of the record supporting this approval. The EPA Regional Administrator hereby concurs with and adopts the responses to comments set forth in that document. That response to comments document together with this **Federal Register** notice constitute EPA's Responsiveness Summary. 40 CFR 123.61(b). A copy of the response to comments document is available upon request.

C. Overview of EPA's Rationale

1. Introduction

a. Maine's Application

On December 17, 1999, EPA determined that the State of Maine had submitted a complete application for approval to administer the MEPDES permitting program pursuant to CWA section 402(b), 33 U.S.C. 1342(b). 64 FR 73552, 73553 (December 30, 1999). In its application, the state asserted that it has authority to administer the program throughout the state, including in the territories of the federally recognized Maine Indian tribes. *See* 40 CFR 123.23(b) and Maine's application in the administrative record supporting this decision, Ad. Rec. section 1d–1 at 33–38. Maine argued that Congress granted the state jurisdiction over the territories of the federally recognized Maine Indian tribes in the Maine Indian Claims Settlement Act of 1980 (MICSA), 25 U.S.C. 1721, *et seq.*, which, among other things, ratified the Maine Implementing Act (MIA), 30 M.R.S.A. section 6201, *et seq.* The state argues that the combination of the federal and state statutes grants the state authority to regulate discharges to water adequate to support Maine's administration of the MEPDES program in the Indian Territories.[3]

EPA has thoroughly analyzed MICSA and MIA, the case law, and an administrative opinion interpreting MICSA to determine the scope of the regulatory authority Congress granted to the state in the southern tribes' Indian Territories. Based on that analysis, EPA finds that MICSA grants the state adequate authority to implement its MEPDES program in the Indian Territories of the Penobscot Nation and Passamaquoddy Tribe, with the exception of any permits for facilities with discharges which would qualify as an internal tribal matter. EPA has determined that there are currently two tribal facilities with discharges that the state cannot regulate, and EPA will retain the authority for the NPDES permits for those facilities.

b. Federally-Recognized Indian Tribes in Maine

There are four federally recognized Indian tribes in Maine: the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians. For the purposes of this notice, EPA will refer to the Penobscot Nation and Passamaquoddy Tribe collectively as the ''southern tribes.'' MICSA sets up the same jurisdictional arrangement for both southern tribes, and their Indian Territories generally lie to the south of the ''northern tribes,'' the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians.

As described more fully below, the configuration of the southern tribes' Indian Territories raises the most pressing questions about how Maine's MEPDES program applies under MICSA to facilities in and around those

[1] In this notice, EPA uses the terminology of the Maine Indian Claims Settlement Act in referring to the Passamaquoddy Tribe and Penobscot Nation. *See* 25 U.S.C. 1722(h) and (k). Although the Bureau of Indian Affairs refers to the Penobscot Nation as the ''Penobscot Tribe of Maine'' in its list of federally recognized tribes, 67 FR 46328, 46330 (July 12, 2002), the tribal government and MICSA identify the tribe as the ''Penobscot Nation.'' EPA also notes that the Passamaquoddy Tribe has two tribal governments in Maine, the Passamaquoddy Tribe of Indians Indian Township Reservation and the Passamaquoddy Tribe of Indians Pleasant Point Reservation. Our reference to the Passamaquoddy Tribe includes both these governments and their territories.

[2] The state has adopted statutory authority for DEP to regulate cooling water intake structures. 38 M.R.S.A. section 414–A(6), c. 231, section 11 (Public Law of 2001). Once DEP develops implementing regulations and submits a program to address CWA section 316(b), EPA will invite comment separately on this program element.

[3] EPA used the term ''Indian country,'' 18 U.S.C. 1151, to refer to the areas the Agency retained from its partial approval of Maine's program on January 12, 2001 (*see* 66 FR at 12792–12793) because the tribal lands involved in this dispute appear to come within the statutory definition of Indian country. Several parties have questioned the use of the term ''Indian country'' in Maine. EPA has decided that it is appropriate to adopt the term ''Indian Territory,'' 25 U.S.C. 1722(g) and (j), that MICSA uses to describe the lands of the Penobscot Nation and Passamaquoddy Tribe because it is MICSA that defines the jurisdictional status of those lands.

territories. In addition, certain provisions in MICSA apply solely to the southern tribes, and EPA's administrative record very thoroughly presents the legal arguments on all sides concerning the southern tribes. Therefore, EPA is acting now on Maine's application solely as it applies to the Indian Territories of the southern tribes, and does not address Maine's application with regard to the northern tribes' lands.

c. EPA's Process

The question of whether Maine possesses adequate authority to administer the MEPDES program in the Indian Territories has been particularly controversial, and EPA has gone to great lengths to understand all the relevant arguments from the tribes, the state, members of the public, and other governmental bodies.

i. Public Comment

EPA provided two public comment periods on this application. The first, starting December 30, 1999, invited comment on the entirety of Maine's application to administer the MEPDES program, including the state's assertion of authority in the Indian Territories. 64 FR 73552. EPA received extensive comment on the question of the state's authority in the Indian Territories, and that topic was the focus of most of the comments presented at the public hearing EPA held in Augusta, Maine on February 16, 2000. On May 16, 2000, EPA received a legal opinion it had requested in October 1999 from the Department of the Interior (DOI) addressing the state's application to administer the program in the Indian Territories of the southern tribes. In light of the importance of DOI's analysis, on June 28, 2000 EPA extended the public comment period to invite further comment on the question of the state's authority in the southern tribes' Indian Territories. 65 FR 39899. After one further extension, the comment period finally closed on August 21, 2000. 65 FR 47989 (August 4, 2000). In addition, EPA has held numerous informal meetings with members of the public concerned about jurisdiction in the southern tribes' Indian Territories.

ii. Consultation With Maine Tribes

EPA anticipated that the state would apply to administer its MEPDES program within the tribes' lands and territories and that this application would obviously have a significant impact on the Maine tribes in particular. Therefore, as described in our original notice inviting comment on Maine's application, EPA initiated consultations with the Maine tribes even prior to the state's submission of its application. *See* 64 FR 73552, 73554 (December 30, 1999). The Agency met numerous times with the tribes and their representatives concerning Maine's application. These sessions include a series of meetings during the winter of 2000 concerning the state's authority in the southern tribes' Indian Territories and northern tribes' lands, a conference call with EPA's Administrator, a series of discussions surrounding efforts between the state and the southern tribes to negotiate a settlement of the dispute, and two sets of meetings between the tribal representatives of the southern tribes, including Chiefs, Governors, and tribal council members, and each of the successive EPA Regional Administrators delegated to make this decision during the pendency of this action. *See* generally Ad. Rec. section 2.

iii. Consultation With DOI

EPA solicited the views of DOI on the interpretation of MICSA. On May 16, 2000, DOI provided EPA with a legal opinion (DOI Op.) finding that Maine did not have adequate authority under MICSA to administer the NPDES program in the Indian Territories of the southern tribes. DOI Op. at 18–19.

d. EPA's Approval Outside of the Tribes' Indian Territories and Lands

On January 12, 2001 EPA approved Maine to administer the MEPDES program in areas of the state outside of Indian country. EPA deferred action on the balance of Maine's application and retained responsibility to administer the NPDES program in the Indian Territories and lands. 66 FR 12791 (February 28, 2001). Disputes over the boundaries of the southern tribes' Indian Territories raised questions about the reach of the area EPA retained. To preserve the status quo pending a final determination on Maine's application, EPA deferred action on all the disputed areas. As a result, EPA retained responsibility for twenty-two NPDES permits for existing point source discharges, including two tribal facilities, nineteen non-member facilities, and one facility jointly owned by a tribe and town (*id.* at 12795, App. 1) pending a final decision. Pursuant to CWA section 402(c)(1), however, EPA's authority to issue permits remained suspended in the areas where it deferred action on the state's application. *Id.* at 12793.

e. Discharges to Indian Territory Waters

EPA currently retains 19 NPDES permits for non-member discharges and 2 permits for tribal discharges to waters that are arguably within the southern tribes' Indian Territories. The tribes and the state disagree both as to whether these discharges are to waters within the Indian Territories and as to whether the state has adequate authority to regulate any discharges in the Indian Territories. In addition, EPA retained the permit for a facility that the Passamaquoddy Tribe's government at Pleasant Point owns jointly with the neighboring town of Eastport.[4]

In the state's view, none of the non-member discharges are to waters within the Indian Territories. Solely for purposes of this decision, however, EPA has assumed that all of the 19 non-member discharges and the two tribal discharges are to Indian Territory waters and are therefore subject to MICSA's special jurisdictional arrangements. Even the most expansive interpretation of the boundaries of the Indian Territories advanced by the southern tribes, however, would only include the discharge points themselves, not the rest of the non-member facilities and their operations.

f. Framework for EPA's Analysis of State Authority

Consistent with their distinctive history, the status of the southern tribes under MICSA is unique in federal law. *See Passamaquoddy Tribe* v. *State of Maine*, 75 F.3d 784, 787 (1st Cir. 1996). As a result, EPA's analysis of the state's application to administer the MEPDES program within the tribes' Indian Territories must rely on a different analysis than that which would control other tribes' Indian country areas in other states. While this decision is based primarily on EPA's analysis of whether MICSA grants the state jurisdiction over discharges into navigable waters within the southern tribes' Indian Territories, the Agency must also consider relevant federal Indian law, the CWA, and EPA's implementing regulations.

[4] In our partial program approval on January 12, 2001, EPA temporarily retained three facilities operated entirely or in part by the southern tribes. *See* 66 FR 12791, 12795 App.1 (February 28, 2001). Today, EPA is retaining the two of those facilities that are entirely contained within the southern tribes' Indian Territories and serve only tribal members: Penobscot Indian Nation Indian Island (NPDES Permit No. ME0101311) and Passamaquoddy Tribal Council (NPDES Permit No. ME0100773). The third facility, Passamaquoddy Water District (NPDES Permit No. ME0102211), is connected to a water system that serves not only the Passamaquoddy Pleasant Point reservation, but also the adjacent town of Eastport. In addition, while the drinking water distribution pipes reach into the Pleasant Point reservation, the facility and its outfall do not lie in an Indian Territory, disputed or otherwise. Therefore, EPA is including this permit in the state's approved MEPDES program.

i. NPDES Program Approvals Under the CWA

Before EPA may approve a state's application to administer the NPDES program, CWA section 402(b) and its implementing regulations require that the state must show that it has adequate authority to carry out the NPDES program. 33 U.S.C. 1342(b); 40 CFR 123.21–123.30. In addition, a state that ''seeks authority over activities on Indian lands'' must provide an attorney general's statement containing ''an appropriate analysis of the State's authority.'' 40 CFR 123.23(b). Section 402(b) of the CWA provides that ''[t]he Administrator shall approve each such submitted program unless he determines that adequate authority does not exist'' for the state to implement the program consistent with the Act's requirements. EPA's state program approval regulations provide that ''the Administrator shall approve or disapprove the program based on the requirements of (40 CFR part 123) and of the CWA and taking into consideration all comments received.'' 40 CFR 123.61(b).

ii. States Generally Lack Jurisdiction in Indian Country

The most significant unresolved issue regarding Maine's application to administer the NPDES program is whether the state has authority to regulate discharges to waters of the Indian Territories. The well-established principle under federal Indian law is that states generally lack authority in Indian country. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 214–15 (1987). Thus, if a state does not demonstrate specific authority in Indian country, EPA will not approve a state application to administer an EPA program in Indian country. ''EPA regulations allow for the possibility that a State may be authorized to issue NPDES permits on a Federal Indian reservation after adequate demonstration by the State of regulatory authority, although EPA recognizes that the threshold demonstration is high and that EPA has not expressly authorized a State to do so.'' 58 FR 67966, 67978 (1993). ''Under 40 CFR 123.23(b) * * *, a State seeking to carry out * * * the NPDES program[] * * * on Indian lands must provide a specific analysis of its authority to do so.'' *Id.* at 67973.

EPA's actions can neither change the congressionally determined status of that land, nor deprive the federal government of its duty and prerogative to protect tribal governance of Indian lands. *HRI, Inc.* v. *EPA*, 198 F.3d 1224, 1242 (2000). It is Congress which has plenary power over Indian affairs based on the Indian commerce clause of the Constitution and the trust responsibility of the federal government to the tribes. *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 56 (1978). As a result, only Congress may change the jurisdictional relationships in Indian country by expanding or contracting state, tribal and federal jurisdiction. The sole limitation is that those changes bear some rational relationship to the best interests of the Indian tribes. *Morton* v. *Mancari,* 417 U.S. 535 (1974).

iii. Trust Responsibility and Interpreting MICSA

The federal government and each of its agencies, including EPA, have a trust relationship with federally-recognized Indian tribes. *Penobscot Nation* v. *Fellencer*, 164 F.3d 706, 709 (1st Cir. 1999). Indeed, that trust relationship was part of the basis supporting the land claims suit that ultimately led to Congress passing MICSA. *Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370, 379 (1st Cir. 1975). As discussed below in section III, EPA is not persuaded by the arguments that MICSA generally precludes operation of the trust responsibility in Maine. In any case, the United States Court of Appeals for the First Circuit has confirmed that the canons of construction favoring tribes still operate in Maine. *Penobscot Nation* v. *Fellencer*, 164 F.3d 706, 709 (1st Cir. 1999). In Fellencer, the court found that these special interpretive rules obliged the court to construe statutes that diminish ''the sovereign rights of Indian tribes * * * strictly,'' and ''ambiguous provisions * * * to the [Indians'] benefit,'' which is ''rooted in the unique trust relationship between the United States and the Indians.'' 164 F.3d 706, 709 (1st Cir. 1999) (quoting *Rhode Island* v. *Narragansett Indian Tribe,* 19 F.3d 685, 702 (1st Cir. 1994); County of *Oneida* v. *Oneida Indian Nation of New York*, 470 U.S. 226, 247 (1985)) (insertion in original); *see also*, HRI, 198 F.3d at 1247.

iv. Framework for Decision

The State of Maine must have adequate authority in the southern tribes' Indian Territories in order for EPA to approve the state's application for those areas, and federal Indian law would generally bar state authority in Indian country. Thus, EPA must determine whether MICSA granted adequate authority to the state in the Indian Territories. Because of the canon of construction requiring that statutory ambiguities be construed in favor of tribes, such a grant of authority to the state would have to be unambiguous.

2. Approval of Maine's Application To Administer the MEPDES Program in the Indian Territories of the Penobscot Nation and Passamaquoddy Tribe

After analyzing the state's application through our framework for decision, EPA has determined that MICSA unambiguously granted the state adequate authority to administer the MEPDES program in the Indian Territories of the southern tribes. EPA also has found that MICSA did not grant adequate authority to administer permits for facilities with discharges that qualify as internal tribal matters, which includes two existing tribal facilities' discharges. Pursuant to the provisions of CWA section 402(b), therefore, EPA is approving Maine's application to administer the MEPDES program for discharges to Indian Territory waters, except for permits that EPA determines are internal tribal matters, subject to the requirements imposed by the CWA on all state-run NPDES programs.

EPA emphasizes that we base this conclusion on the unique provisions of MICSA and MIA. Congress was very clear that the combination of these statutes creates a jurisdictional arrangement for the southern tribes' Indian Territories unlike any other in the nation. S. Rep. 96–957 at 29 (1980)(S. Rep.)(''The treatment of the Passamaquoddy Tribe and Penobscot Nation in the Maine Implementing Act is original.''); *Akins* v. *Penobscot Nation*, 130 F.3d 482, 484 (1st Cir. 1997). Because MICSA is unique, EPA's decision here does not have any bearing on the question of state and tribal jurisdiction in Indian country outside of Maine. In addition, EPA has not yet decided what action to take on Maine's application as it relates to the lands of the northern tribes, and this discussion does not necessarily bear on that part of Maine's application.

a. Penobscot and Passamaquoddy Indian Territories

This analysis relates to the Indian Territories of the southern tribes, which include both the tribes' pre-MICSA reservations and their trust lands acquired post-MICSA. 25 U.S.C. 1722(g) and (j); 30 M.R.S.A. section 6205(1) and (2). MICSA confirmed the southern tribes' reservations as those reservations were defined in the MIA. 25 U.S.C. 1722(f) and (i). The MIA, in turn, included definitions of the southern tribes' reservations, and those definitions referred to treaties concluded between the southern tribes and the States of Maine and Massachusetts in the eighteenth and

nineteenth centuries. 30 M.R.S.A. section 6203(5) and (8). MICSA provides for the southern tribes to acquire lands outside the original reservations and to have the United States take up to 150,000 acres acquired by each southern tribe into trust ''for the benefit of the respective tribe or nation.'' 25 U.S.C. 1724(d).

The geography of the pre-MICSA reservations, which are still the center of the Indian Territories, demonstrates the importance of water quality to the southern tribes. Portions of the Passamaquoddy Pleasant Point Reservation lie along the St. Croix River and the tribe's community at its Indian Township Reservation is housed in immediate proximity to areas flooded by the Grand Falls Dam impoundment. Notwithstanding the dispute discussed below, all parties appear to agree that the Penobscot Nation's reservation includes at least the islands in the main stem of the Penobscot River, which were not sold prior to 1980, starting with Indian Island, and proceeding north approximately 45 miles up to the fork in the river where west and east branches of the river converge. There also appears to be no dispute that the reservation does not include the upland on either side of the Penobscot River's banks. The Penobscot community is housed on Indian Island, completely surrounded by the river. The river also flows through and around the rest of the original reservation. Clearly, the physical setting of the southern tribes in such close proximity to important rivers and waters makes surface water quality very important to them and their riverine culture.

The lands taken into trust for the southern tribes pursuant to MICSA are generally large unfragmented parcels spread across central Maine that are clearly described in modern conveyances recorded with the relevant registry of deeds and the Bureau of Indian Affairs. The boundaries of the original reservations are much less clear, however. There are serious disputes about the precise geographic reach of the southern tribes' reservations under MICSA, some of them arising out of interpretations of the treaties referred to in MIA. EPA specifically invited comment on those disputes when we first extended the comment period on Maine's application. *See* 66 FR 12791, 12793 (February 28, 2001).

The dispute that most directly impacts existing permitted discharges involves how far the Penobscot Reservation in the Penobscot River extends upriver and whether it includes the bed and banks of the river. DOI has concluded that the Penobscot reservation includes the bed and banks of the Penobscot River. Letter from Edward B. Cohen to John P. DeVillars, September 2, 1997 at 6 (Ad. Rec. section 4–25). According to DOI, the Penobscot River bank separates the reservation—the river and islands—from the non-Indian land on either side. Pursuant to DOI's position, facilities located near the bank of the river where the Nation's reservation lies, with discharge pipes into the river, are crossing a boundary into the Nation's reservation. The Penobscot Nation also asserts that its reservation includes not only the main stem of the Penobscot River north of Indian Island, but also the east and west branches up to the headwaters and tributaries. The state maintains that the reservation only includes the islands in the main stem. DOI has not announced a position on this dispute over the branches and tributaries.

The NPDES program applies at the point of discharge, and it is the location of the discharge outfall that generally determines which NPDES permitting authority has jurisdiction to issue permits for discharges from a facility that straddles a jurisdictional boundary, such as the border between two states or between Indian country and non-Indian country areas. All nineteen of the non-member facilities EPA retained are situated with the bulk of their facilities and operations on non-tribal land and outfall pipes in the Penobscot River, its branches, or tributaries north of Indian Island. According to DOI's announced position on the boundaries of the Penobscot's reservation, at least seven nonmember facilities located outside of the reservation discharge into its waters of the main stem.

EPA acknowledges that the state and other interested parties vigorously dispute DOI's conclusion about these boundaries. EPA emphasizes that we are taking no action to determine the boundaries of the southern tribes' Indian Territories. Today, EPA is approving the state to administer the MEPDES program both inside and outside of the southern tribes' Indian Territories, except permits for facilities with discharges that EPA determines are internal tribal matters. Therefore, EPA need not determine the exact location of those boundaries in this action.

b. Authority To Regulate Discharges to Indian Territory Waters Under MICSA

EPA has concluded that MICSA unambiguously grants Maine adequate regulatory authority to administer the MEPDES permitting program for most of the discharges in the southern tribes' Indian Territories. EPA does not agree with the DOI opinion that the southern tribes' area of exclusive jurisdiction over internal tribal matters reaches so far as to preclude the state from regulating any discharges to water in the southern tribes' Indian Territories. Rather, the Agency has concluded that the permitting of two existing tribal facilities are internal tribal matters and beyond the reach of Maine's program.

When interpreting the meaning of federal statutes, EPA's first duty is to determine whether Congress has spoken to the issue at hand. *Hughes Aircraft Co.* v. *Jacobson,* 525 U.S. 432, 438 (1999). In the *Chevron* case, the Court used three methods to determine Congress' intent: the plain meaning of the statutory text; reasonable inferences from the structure of the statute; and the legislative history. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 859–864 (1984); *see also, Passamaquoddy Tribe* v. *Maine*, 75 F.3d 784, 793 (1st Cir. 1996). As EPA applies these methods, we remain mindful that Congressional intent to intrude on tribal sovereignty must be unmistakably clear. *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 59 (1978); *Penobscot Nation* v. *Fellencer,* 164 F.3d 706, 709 (1st Cir. 1999).

i. Statutory Text of MICSA and MIA

The key provision in MICSA addressing the jurisdictional relationship between the southern tribes and the state defines that relationship by referring to MIA.

> The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

25 U.S.C. 1725(b)(1). In addition, one of the purposes of MICSA is ''to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation.'' 25 U.S.C. 1721(b)(3). The ultimate source of MIA's authority to affect Indian jurisdiction is MICSA, and where the MIA and MICSA conflict, the federal act controls. 25 U.S.C. 1735(a). The two statutes are closely intertwined, and under the U.S. Constitution, only Congress may alter a tribe's jurisdiction; therefore, federal courts have concluded that MIA's interpretation is a matter of federal law. *Akins,* 130 F.3d at 485; *Penobscot Nation* v. *Fellencer,* 164 F.3d 706, 708 (1st Cir. 1999), cert. denied 527 U.S. 1022 (1999).

Section 6206(1) of the MIA sets out the core of the jurisdictional

relationship between the state and the southern tribes.

[T]he Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State.

30 M.R.S.A. section 6206(1). MIA in turn defines ''laws of the State'' to include ''the Constitution and all statutes, rules or regulations and the common law of the State * * *.'' 30 M.R.S.A. section 6203(4). Therefore, the combination of MICSA and MIA makes state regulatory authority applicable to the southern tribes and their Indian Territories, with the very important exception of ''internal tribal matters.''

MICSA and MIA make that state regulatory authority applicable to the water and water rights in the southern tribes' Indian Territories. MICSA provides that the jurisdictional formula in MIA applies to the southern tribes ''and the land and natural resources owned by, or held in trust for the benefit of the tribes, nation, or their members.'' 25 U.S.C. 1725(b)(1). MICSA specifically defines ''land or natural resources'' to include ''water and water rights.'' Id. at section 1722(b). MIA section 6204 generally makes state law applicable to ''any lands or other natural resources'' owned by Indian tribes or held in trust for them. MIA also defines ''land or other natural resources'' to include ''water and water rights.'' 30 M.R.S.A. section 6203(3). When MIA section 6206(1) addresses the southern tribes in particular, it does not refer specifically to the ''land or other natural resources'' of the tribes when it applies state law to the tribes. But MIA section 6204 appears to operate in parallel with the language in MIA section 6206(1) providing that the southern tribes are ''subject to the laws of the State'' in their quasi-municipal status. And section 6204 makes it clear that under MIA this grant of jurisdiction was designed to cover ''natural resources'' defined to include ''water and water rights.'' [5] Moreover, when Congress ratified MIA's jurisdictional arrangement as to the southern tribes, including section 6206(1), it used a parallel construction in MICSA, making that jurisdictional arrangement applicable to ''natural resources,'' defined to include ''water and water rights.'' 25 U.S.C. 1725(b)(1) and 1722(b). Therefore, MICSA and MIA clearly combine to apply state regulatory authority to the waters of the southern tribes' Indian Territories.

ii. Statutory Structure of MICSA

MICSA includes a specific reference to state environmental laws, a provision that prevents the application of generally applicable federal Indian laws and regulations that would otherwise ''affect or preempt the * * * jurisdiction of the State of Maine including, without limitation, laws of the State relating to land use or environmental matters, * * *.'' 25 U.S.C. 1725(h)(emphasis added).[6] This provision operates together with section 1735(b), which prevents subsequently enacted federal Indian statutes from inadvertently affecting or preempting state jurisdiction after the effective date of MICSA. 25 U.S.C. 1735(b).[7]

The combination of these two subsections, or ''savings clause[s']'' as the First Circuit has labeled them (*Passmaquoddy Tribe,* 75 F.3d at 789), prevents the general body of federal Indian law from unintentionally affecting or displacing MICSA's grant of jurisdiction to the state. The two were the subject of considerable attention and deliberation during the legislative process. S. Rep. at 30–31 and 35; H.R. Rep. 96–1353 at 19–20 and 29 (1980), reprinted in 1980 U.S.C.C.A.N. 3786 (H.R. Rep). And in *Passamaquoddy Tribe* v. *Maine,* 75 F.3d 784 (1st Cir. 1996) the court upheld the operation of section 1735(b) when it found that the subsequently-enacted Indian Gaming Regulatory Act does not apply in Maine because Congress did not make it specifically applicable to the state. The court found that ''section 16(b) of the Settlement Act [25 U.S.C. 1735(b)] gave the State a measure of security against future federal incursions upon [its] hard-won gains in settling the tribes' land claims and gaining jurisdiction over the tribes and their lands. 75 F.3d at 787.

EPA agrees with DOI that these provisions, including section 1725(h), do not directly answer the question before us. DOI Op. at 2 n. 2. A provision that shields state authority from generic intrusions by federal law does not control the question of what authority Congress gave the state in the first place. Nevertheless, it is notable that one area of state authority Congress specifically called out in the savings clauses is the ''laws of the State relating to * * * environmental matters.'' This provision supports the conclusion that the original grant of jurisdiction to the state was designed to include some measure of environmental regulation. Otherwise, why would Congress have bothered to protect that area of state authority under section 1725(h)?

iii. Legislative History of MICSA

MICSA's legislative history also demonstrates that Congress understood state environmental law would apply in the southern tribes' Indian Territories. Indeed, the only passages in the Senate and House Committee reports EPA could find that specifically address environmental regulation under MICSA and MIA show quite explicitly that Congress understood it was making state environmental regulation applicable to the southern tribes' Indian Territories.[8]

The Senate Report discusses the application of state environmental law under section 1725(b)(1), the provision in MICSA that ratified MIA and its

[5] EPA here takes no position on the effect of MIA section 6204 on the northern tribes, other than to note that it is without effect on them absent some corresponding Congressional action in MICSA or another federal statute.

[6] In its entirety, section 1725(h) reads:

Except as other wise [sic] provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for [them] shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

[7] In its entirety, section 1735(b) reads:

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

[8] All sides refer EPA to extensive and conflicting remarks made in the debate of both MICSA and MIA during the federal and state legislative processes. We address those comments in our response to comments document. The focus of our inquiry, however, is not the statements of individual partisans in the debate, but the considered remarks made by the two congressional committees in reports designed to present the collective views of each committee. EPA relies especially on the Senate Report, which the House Report ''accepts as its own'' in part. H.R. Rep. at 20. *Akins* v. *Penobscot Nation,* 130 F.3d 482, 489 (''We look to the Committee Report of the Senate Select Committee on Indian Affairs concerning the Settlement Act.'')(citing *Garcia* v. *United States,* 469 U.S. 70, 76 (1984)).

jurisdictional provisions for the southern tribes:

> State law, including but not limited to laws regulating land use or management, conservation and environmental protection, are fully applicable as provided in this Section and Section 6204 of the Maine Implementing Act. That the regulation of land or natural resources may diminish or restrict maximization of income or value is not considered a financial encumbrance and is not barred from application under this Act.

S. Rep. at 27.

In addition, when explaining the operation of the savings clauses, 25 U.S.C. 1725(h) and 1735(b), discussed in the previous section, the Senate Report provides a specific example of a federal environmental law that would be excluded from operating in Maine Indian Territories to avoid interfering with state environmental law. Although the example in this passage focuses on the provision in the Clean Air Act that allows Indian tribes to reclassify their lands under the prevention of significant deterioration air permitting program, the passage ends by emphasizing that this exclusion would also operate more generally to protect state environmental regulations.

> It is also the intent of this subsection, however, to provide that federal laws according special status or rights to Indian [sic] or Indian Tribes would not apply within Maine if they conflict with the general civil, criminal, or regulatory laws or regulations of the State. Thus, for example, although the federal Clean Air Act, 42 U.S.C. 7474, accords special rights to Indian tribes and Indian lands, such rights will not apply in Maine because otherwise they would interfere with State air quality laws which will be applicable to the lands held by or for the benefit of the Maine Tribes. This would also be true of police power laws on such matters as safety, public health, environmental regulations or land use.

S. Rep. at 31; *see also* H.R. Rep. at 29. In addition, this passage makes clear that Congress was not limiting the application of federal Indian law in Maine solely to avoid any interference with state environmental regulation as it applies to lands outside the Indian Territories. The report specifically discusses Congress's intent to protect the application of state air quality laws which will be applicable to land held ''for the benefit of the Maine Tribes.'' Again, this discussion would be pointless if Congress did not specifically intend to make state environmental regulation applicable in the southern tribes' Indian Territories.

iv. Concurrent Jurisdiction

Several tribal commenters have argued that the southern tribes have concurrent jurisdiction with the state under MICSA, and this concurrent jurisdiction prevents the state from exercising adequate authority to implement its NPDES program in the Indian Territories. In our consultations, those commenters specifically asked EPA to address the question of concurrent jurisdiction. Indeed, the First Circuit has held that simply because Congress has made state law applicable in Indian country does not mean that Congress has necessarily limited an Indian tribe's inherent sovereignty. In *State of R.I.* v. *Narragansett Indian Tribe,* 19 F.3d 685 (1st Cir. 1994), cert. denied 513 U.S. 919 (1994), the court reviewed the effect of the Rhode Island Indian Claims Settlement Act (25 U.S.C. 1701–1716) and the Indian Gaming Regulatory Act on the Narragansett Tribe. In language very similar to MICSA section 1725(b) and MIA section 6204, the Rhode Island settlement act provides that the tribe's ''settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.'' 25 U.S.C. 1708. In analyzing the effect of this language, the court concluded:

> [T]he mere fact that the [Rhode Island] Settlement Act cedes power to the state does not necessarily mean, as Rhode Island suggests, that the Tribe lacks similar power and, thus, lacks ''jurisdiction'' over the settlement lands. Although the grant of jurisdictional power to the state in the Settlement Act is valid and rather broad, . . . we do not believe that it is exclusive. To the contrary, we rule that the Tribe retains concurrent jurisdiction over the settlement lands and that such concurrent jurisdiction is sufficient to satisfy the corresponding precondition to applicability of the Gaming Act.

Narragansett, 19 F.3d at 701. In a subsequent dispute over the law applicable to construction of a tribal housing complex, the District Court sorted through the overlapping authorities of state and tribal concurrent jurisdiction using a preemption analysis, generally finding that state law was preempted, with the one exception of the state's coastal resources management plan. *Narragansett Ind. Tribe of RI* v. *Narragansett Elec.,* 878 F.Supp. 349, 361–66 (D.R.I. 1995), rev'd on other grounds 89 F.3d 908 (1996). The District Court specifically found the state regulations to implement the CWA were preempted. 878 F.Supp. at 362; *see also Narragansett,* 19 F.3d at 703. Therefore, it is important to assess whether MICSA allows the southern tribes to assert concurrent jurisdiction that might preempt the laws of the state.

Notably, the First Circuit in the *Narragansett* case briefly compared the Rhode Island settlement act with MICSA. The court intended to highlight the extent to which Congress had not impaired the Narragansetts' sovereignty in Rhode Island:

> Comparative analysis is also instructive. We think it is sensible to compare the jurisdictional grant embedded in the [Rhode Island] Settlement Act with the jurisdictional grants encased in two other Indian claims settlement acts that were to some extent modeled after the Settlement Act. Both of the latter pieces of legislation—one involving Massachusetts, one involving Maine—contain grants of jurisdiction parallel to section 1708, expressed in similar language. *See* . . . 25 U.S.C. 1725 (1988). Yet both acts also contain corresponding limits on Indian jurisdiction, conspicuously absent from the Settlement Act. *See* . . . 25 U.S.C. 1725(f). By placing state limits on the retained jurisdiction of the affected tribes, these newer acts imply that the unadorned grant of jurisdiction to a state . . . does not in and of itself imply exclusivity.

Id. at 702. The cross reference to MICSA is to a section specifically addressing the southern tribes' concurrent jurisdiction:

> The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, *to the extent authorized by the Maine Implementing Act,* and any subsequent amendments thereto.

25 U.S.C. 1725(f) (emphasis added). While MICSA specifically reserves the southern tribes's exclusive jurisdiction over Indian child custody proceedings (25 U.S.C. 1727(a)), Congress provided in section 1725(f) that MIA generally defines the extent of the southern tribes' jurisdiction. Section 6206(1) of MIA defines the scope of the general powers of the southern tribes as generally the same as those of municipalities in Maine. In matters where MIA accords the southern tribes a status similar to Maine municipalities, they enjoy considerable homerule authority. See *International Paper Co.* v. *Town of Jay,* 665 A.2d 998 (Me. 1995); *Central Maine Power* v. *Town of Lebanon,* 571 A.2d 1189 (Me. 1990). But that authority is ultimately subject to definition and preemption by the state. *Midcoast Disposal* v. *Town of Union,* 537 A.2d 1149 (Me. 1988). In the case of Maine's MEPDES program, the state has not delegated to municipalities the authority to issue permits that would implement the NPDES program under the CWA. Therefore, EPA sees no basis under MIA for finding that the southern tribes' concurrent jurisdiction could exclude or preempt state regulation of

discharges to waters in the Indian Territories.[9]

v. Conclusion

In sum, the text, structure, and legislative history of MICSA each indicate that Congress clearly granted the state authority to regulate the environment in the Indian Territories of the southern tribes, and read in combination they make this conclusion unambiguous. Where there is no ambiguity in Congress' intent, EPA may not apply the interpretive canon favoring Indian tribes. *See Passamaquoddy,* 75 F.3d at 793 (''If ambiguity does not loom, the occasion for preferential interpretation never arises.'') This grant of authority is adequate to support the state's application to administer the MEPDES program in the Indian Territories of the southern tribes. As discussed below, EPA must also consider that MICSA limited that grant by reserving exclusive jurisdiction over internal tribal matters to the southern tribes, but we have determined that this exception to the state's authority currently only excludes two tribal facilities from the Maine's MEPDES program.

c. The Scope of the Tribes' Authority Over Internal Tribal Matters

The DOI opinion that EPA requested and the parallel comments from the southern tribes make persuasive arguments about the importance of the internal tribal matters exception and about Congress's purpose to preserve the southern tribes' culture and protect them as sovereign entities. EPA agrees with DOI and the tribes about the importance to the tribes of the internal tribal matters exception, and that we must analyze the scope of MICSA's internal tribal matters exception to fully understand the extent of the broad grant of authority to the state. To that extent, EPA is essentially adopting DOI's legal analysis of the basic structure of MICSA.

EPA does not agree, however, with DOI's assessment of the scope of the matters reserved to exclusive tribal jurisdiction under the internal tribal matters exception. DOI and the tribes concluded that the exclusion of internal tribal matters from state regulation prevents Maine from regulating the environment, at least for the purposes of implementing its MEPDES permitting program in the southern tribes' Indian Territories. When EPA takes DOI's legal analysis of the structure of MICSA and applies it to the facts we have in Maine, we believe that DOI has misunderstood what Congress intended in MICSA and the practical impacts of implementing an NPDES program. EPA does not disagree with DOI lightly, because the Department is the federal government's expert agency on Indian law and is charged with administering MICSA. The Supreme Court has made it clear that an advisory legal opinion such as DOI's May 16, 2000 letter is owed respect to the extent it is persuasive. *United States* v. *Mead Corp.*, 533 U.S. 218, 121 S.Ct. 2164, 2175–76 (2001); *Christensen* v. *Harris County*, 529 U.S. 576, 587 (2000); and *AIAM* v. *Mass. DEP,* 208 F.3d 1, 6 (1st Cir. 2000).

Nevertheless, this matter requires us to analyze how MICSA's jurisdictional formulation applies to implementing the NPDES program. As the agency Congress has delegated to implement the CWA and the NPDES program nationwide, EPA has particular expertise in administering NPDES programs. The Agency takes issue with some points in DOI's opinion that are purely legal in nature. On these points, EPA has had the benefit of reviewing a fully developed administrative record presenting the legal arguments and relevant information submitted from all sides of this dispute. In addition, part of our disagreement with the Department's analysis turns on our understanding of the effects of NPDES permitting in these areas. Our experience in assessing the impacts of NPDES permitting on the regulated community and the public particularly qualifies EPA to apply DOI's legal principles to these difficult facts.

The factual scenario we confront directly implicates the conduct of non-members and the core of the southern tribes interest in protecting their environment. Assuming DOI is correct that the Penobscot reservation reaches bank to bank in the Penobscot River, any facility located near the bank of that river that needs to discharge into the river crosses a boundary into Indian Territory. The land-based portion of the facility's operations would not be in the Nation's reservation and would clearly be subject to state jurisdiction. But this part of Maine is not extensively served by sewage systems that could allow a facility to avoid direct discharges into the Penobscot River. So in the event a facility needs to discharge into the Penobscot River above Indian Island, its discharge would be into the Penobscot Nation's reservation as defined by DOI. These facts present a clear tension between the interest of the Nation in the environmental quality of its Indian Territory and the interest of the state in applying its discharge permitting program statewide. We believe the Agency's understanding of the CWA in general and the NPDES program in particular makes an important contribution when weighing these interests, and that we are in a position to refine DOI's analysis.

i. MICSA and Strengthening the Sovereignty of the Maine Tribes

Early in their analyses, the tribes and DOI examine the theme in MICSA's legislative history that Congress was strengthening the sovereignty of the Maine tribes by passing MICSA and ratifying MIA. For example the Senate Report concludes that ''rather than destroying the sovereignty of the tribes, by recognizing their power to control their internal affairs * * * *the settlement strengthens the sovereignty of the Maine Tribes.''* DOI Op. at 6–7, quoting S. Rep at 14 (DOI's emphasis). DOI's opinion then looks to the legal status of the southern tribes immediately prior to passage of MICSA. The opinion argues that in *Bottomly* v. *Passamaquoddy Tribe*, 599 F.2d 1061, 1065–66, the First Circuit held in 1979 that the southern tribes were in essentially the same position as Indian tribes across the nation, with ''inherent powers of a limited sovereignty'' to regulate their own affairs. DOI Op. at 7; see also *Joint Tribal Council of the Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370, 378–80 (1st Cir. 1975). Accordingly, DOI infers that if Congress were indeed strengthening the sovereignty of the Maine tribes in comparison with their legal status immediately prior to 1980, MICSA must accord the southern tribes at least as much authority to regulate their own environment as Indian tribes outside Maine enjoy.

EPA agrees that the southern tribes had won important victories in court, and their legal status prior to MICSA as a matter of federal Indian law may well

[9] Several sections of MIA reserve specific matters for exclusive tribal jurisdiction. See 30 M.R.S.A. sections 6206(3) (exclusive tribal jurisdiction over violations of tribal ordinances by tribal members within Indian Territory), 6207(1) (exclusive tribal authority to regulate hunting, trapping or other taking of wildlife, and taking of fish on ponds under ten acres within Indian Territory), 6209–A(1) and 6209–B(1) (exclusive tribal court jurisdiction over certain misdemeanors and small claims by and against tribal members, Indian child custody proceedings, and domestic relations matters between tribal members residing on the reservation), and 6210(1) (exclusive authority of tribal law enforcement officers to enforce laws within the exclusive regulatory or adjudicatory jurisdiction of the tribes). None of these specific categories of the southern tribes' exclusive jurisdiction would preempt sufficient state authority to prevent Maine's MEPDES program from operating in the southern tribes' Indian Territories. In addition to giving the southern tribes the powers and limitations of municipalities under Maine law, section 6206(1) also carves out the broadest exception to state authority, ''internal tribal matters,'' that is discussed in the next section of this notice.

have been essentially that of other tribes nationwide, but that conclusion was far from settled law. The *Bottomly* court found that Congress had never acted to deprive the Passamaquoddy Tribe of its sovereign immunity. 599 F.2d 1061. The Supreme Judicial Court of Maine in *State of Maine* v. *Dana* found that the trial court had erred in not conducting fact-finding to determine if the site of a crime had retained its aboriginal character and was therefore under the exclusive criminal jurisdiction of the federal government. 404 A.2d 551 (1979). While both courts found that the Passamaquoddy Tribe retained a limited sovereignty and the *Dana* court strongly intimated that the area where the crime took place qualified as Indian country, 404 A.2d at 563, neither court ruled on the subject of the state's and tribes' respective jurisdictions over the reservation, and neither case involved the Penobscot Nation. It thus makes sense that Congress viewed MICSA as a settlement of the parties' positions in litigation that were not yet finally resolved.

Both of the congressional committee reports for MICSA make it clear that Congress understood it was acting against the backdrop of Maine's position that the southern tribes were essentially wards of the state. Based on this assertion, the state claimed the authority to regulate virtually all aspects of the southern tribes' existence, with little to distinguish the tribes from any other voluntary association of state citizens. ''Prior to the settlement, the State passed laws governing the internal affairs of the Passamaquoddy Tribe and the Penobscot Nation, and claimed the power to change these laws or even terminate these tribes.'' S. Rep. at 14; *see also* H.R. Rep. at 14. When Congress preserved a subset of the southern tribes' inherent sovereignty from state regulation by carving out ''internal tribal matters'' from the grant of state jurisdiction, it was strengthening the southern tribes sovereignty in comparison with the federal government's nearly complete abandonment of the tribes' inherent sovereignty up to that point. See *Joint Tribal Council,* 528 F.2d at 375 (in which the U.S. Secretary of the Interior argued that the United States had no trust relationship with the Passamaquoddy Tribe). The language that surrounds DOI's quotation from the Senate Report confirms this conclusion:

> While the settlement represents a compromise in which state authority is extended over Indian territory to the extent provided in the Maine Implementing Act, in keeping with these decisions [recognizing the federal status of Maine tribes] the settlement provides that henceforth the tribes will be free from state interference in the exercise of their internal affairs. Thus, rather than destroying the sovereignty of the tribes, by recognizing their power to control their internal affairs and by withdrawing the power which Maine previously claimed to interfere in such matters, the settlement strengthens the sovereignty of the Maine Tribes.

S. Rep. at 14; H.R. Rep. at 15.

Therefore, EPA does not believe that the reference to strengthening tribal sovereignty in the legislative history indicates that Congress meant ''internal tribal matters'' to act as a codification of either the full scope of inherent sovereignty retained by most Indian tribes or the core governmental powers of other tribes. Rather, Congress clearly intended internal tribal matters to be a more narrow reservation of a subset of tribal authority that was unique in scope from those powers retained by other tribes.

ii. Statutory Analysis and Internal Tribal Matters

The southern tribes and DOI are clearly correct that Maine is prevented from regulating internal tribal matters. This term is not exhaustively defined in either MIA, where it appears, or in MICSA, which simply ratifies its appearance in MIA. 30 M.R.S.A. section 6206(1); 25 U.S.C. 1725(b)(1). Rather, MIA simply provides a list of examples illustrating internal tribal matters, and the First Circuit has twice held that this list is not exclusive. *Akins,* 130 F.3d at 486; *Fellencer,* 164 F.3d at 709. But EPA is unable to conclude that this exception extends generally to reserve regulation of discharges to Indian Territory waters from the grant of state authority under MICSA.

DOI's statutory analysis focuses on two of the examples of internal tribal matters in MIA: ''the right to reside within the respective Indian territories'' and ''tribal government.'' The tribes and DOI assess how federal courts and EPA have interpreted similar attributes of tribal sovereignty as they operate generally under federal Indian law outside the context of MICSA. Under DOI's interpretation, the internal tribal matters exception would swallow the rule. The greatest weakness of DOI's argument that internal tribal matters includes ''regulation of water quality including point-source discharges,'' DOI Op. at 18, is that it largely fails to reconcile that conclusion with the grant of authority to the state to regulate the environment in the southern tribes' Indian Territories, as reflected in text, structure, and legislative history of MICSA and MIA outlined in the previous section.

DOI's interpretation of these statutory examples renders the concept of internal tribal matters virtually indistinguishable from the ''inherent powers of a limited sovereign'' that tribes generally have outside of Maine. But as the *Akins* court concluded, one cannot equate internal tribal matters under MICSA with customary concepts of internal matters or internal affairs under federal Indian law:

> While defining what constitutes an internal matter controlled by Indian tribes is hardly novel in Native American law, it is novel in this context. The relations between Maine and the Penobscot Nation are not governed by all of the usual laws governing such relationships, but by two unique laws, one Maine and one federal, approving a settlement.

130 F.3d at 483. Therefore, EPA concludes that the simple reference to the general federal Indian law defining the traditional concepts of tribal government and tribal control over access to their lands cannot provide the complete answer to this question that DOI finds. DOI Op. at 12.[10]

Although the examples of internal tribal matters in MIA do not completely describe the scope of the exceptions to the state's regulatory authority, it might well be possible for an environmental regulatory program, or elements of it, to operate in a manner that its effects on non-members are limited enough or that the tribal interest is so great that it qualifies as an internal tribal matter. Indeed, for two existing tribal facilities in the southern tribes' Indian Territories, EPA has determined that regulating their water discharges is an internal tribal matter, as described below. But EPA concludes that regulating discharges that would have substantial effects on non-members is not so confined that it qualifies as an internal tribal matter.

iii. Judicial Guidance on Internal Tribal Matters: The *Akins* and *Fellencer* Cases

Independent of DOI, EPA has reviewed the two federal Court of Appeals decisions that depended on the scope of internal tribal matters, *Akins* v. *Penobscot Nation,* 130 F.3d 482 (1st Cir.

[10] That is not to say that the internal tribal matters examples of tribal government and the right to reside are rendered meaningless. EPA notes that the tribes may decide who may live in their Indian Territories and how to conduct the affairs of their governments without the ability to regulate non-member discharges to waters of Indian Territory by facilities located outside of Indian Territory. *See e.g. Great Northern Paper, Inc.* v. *Penobscot Nation,* 770 A.2d 574, 590–91 (Me. 2001)(southern tribes control access to the internal deliberations of their tribal governments).

1997), and *Penobscot Nation* v. *Fellencer,* 164 F.3d 706 (1st Cir. 1999). Those opinions presented factors the court used to assess whether an activity is an internal tribal matter. Although the Penobscot Nation won both of these cases when the court found that the activity involved was an internal tribal matter, EPA believes that the analysis in these opinions actually confirms the Agency's finding that regulating the discharges to Indian Territory waters by non-member facilities is not an internal tribal matter.

Akins is the most relevant case, because it involved a dispute over natural resources management, specifically the Nation's right to license the cutting of timber on its Indian Territory. Indeed, it is notable that *Akins* involves ''timber and timber rights,'' which is listed as a subject matter of state regulation in Indian Territory under MIA's definition of natural resources. 30 M.R.S.A. section 6203(3). The Nation had adopted a requirement that only tribal members who were also residents of Maine could receive permits to cut the Nation's timber, or ''stumpage permits.'' Akins had recently moved to Alabama, and he was the only tribal member deprived of a license by the new residency requirement. Akins made claims for deprivation of rights under Maine law and under section 1983 of the Civil Rights Act, which requires that the alleged misconduct have taken place ''under color of state law.'' *Akins,* 130 F.3d at 483–84. If the dispute over the stumpage permit was an internal tribal matter, then it would not arise under state law, and the tribal courts would have exclusive jurisdiction over Akins's claims. *Id.* at 485.

Superficially, *Akins* may appear to stand for the principle that a tribe using permits to manage its natural resources is an internal tribal matter, but the facts of the case and the court's analysis are considerably more narrow. There was no allegation before the court that the Nation's timber licensing program was at any variance with otherwise applicable state environmental or land use regulations: ''* * * the Implementing Act, section 6204, makes state laws regulating land use or management, conservation and environmental protection applicable to tribal lands. The absence of an assertion that any such laws are involved here is telling.'' Id. at 488. Moreover, the court was at pains to point out that the dispute did not implicate state law or any interest other than a dispute between tribal members:

> This is not a dispute between Maine and the Nation over the attempted enforcement of Maine's laws. * * * This is not an instance of the potential conflict or coincidence of Maine law and federal statutory law. This is not even a situation of substantive rights regarding stumpage permits granted to persons by statute, state or federal. This is instead a question of allocation of jurisdiction among different fora and allocation of substantive law to a dispute between tribal members where neither the Congress nor the Maine Legislature has expressed a particular interest.

Akins, 130 F.3d at 487–88. When EPA applies the court's discussion of its analytical factors to the facts that confront us in this situation, we conclude that the analysis in *Akins* strongly confirms our finding that regulation of the non-member discharges to Indian Territory waters is not an internal tribal matter.

The facts of the *Fellencer* case do not bear as directly on water quality regulation, but the court's analysis further illustrates its approach to defining internal tribal matters. The Penobscot Nation fired Fellencer, a non-Indian community nurse who worked for the Nation. After discharging her, Fellencer alleged that the Nation posted an opening for a community nurse with an express preference for Indian applicants. Fellencer sought to enforce state law prohibiting employment discrimination based on race or national origin. *Fellencer,* 164 F.3d at 707. If the Nation's decision to terminate Fellencer's employment was an internal tribal matter, she had no claim under state law. As discussed below, applying the *Fellencer* court's analysis of its factors to the facts in this case supports EPA's view that regulation of the non-member discharges to Indian Territory waters is not an internal tribal matter.

EPA has carefully analyzed the court's factor test as it applies to the MEPDES program generally as follows:

Effects on tribal members and non-members: ''First, and foremost'' in the *Akins* court's analysis, the stumpage ''policy purports to regulate only members of the tribe, as only tribal members may even apply for permits. The interests of non-members are not at issue.'' *Akins*, 130 F.3d at 486. The court added:

> Of great significance is that this is an intra-tribal dispute. It involves only members of the tribe, and not actions by the Nation addressed to non-members. The tribe's treatment of its members, particularly as to commercial interests, is not of central concern to either Maine or federal law. * * *

Id. at 488.

By contrast, there are currently seven facilities owned and operated by non-members, whose operations are located on non-Indian lands, with discharges into the main stem of the Penobscot River above Indian Island. Of these seven facilities, three are publicly owned treatment works (POTWs) for municipalities, and one is among the region's largest employers. 66 FR at 12795, App.1. Decisions about the terms under which these facilities can discharge into the Penobscot River implicate the interests of the citizens of these towns and employees of these facilities, easily thousands of people, most of whom are non-members.[11] If the Penobscot Nation is correct about the boundaries of its reservation, the number of non-tribal facilities discharging into the Nation's reservation with operations outside the reservation rises to 19, including at least one other major employer. *Ibid.* If the *Akins* court's ''foremost'' concern was impacts on non-members, the potential for impacts on a substantial number of non-members weighs heavily against finding the regulation of the discharges from these facilities to be an internal tribal matter.

Fellencer did involve one non-member. DOI's opinion notes how the court weighed her interests against those of the Nation, ultimately favoring the Nation's need to control its own employment policies. The court contrasted the limited impact on one non-member with the facts in the *Stilphen* case, where the Maine Supreme Judicial Court found that the regulation of ''beano'' games was not an internal tribal matter. *Penobscot Nation* v. *Stilphen*, 461 A.2d 478 (Me. 1983). In *Stilphen* ''[t]he ''beano'' games * * * were designed to ''draw many hundreds of players to the Penobscot reservation from all over Maine and beyond.' '' *Fellencer*, 164 F.3d at 710, quoting *Stilphen*, 461 A.2d at 480. Thus, in the *Fellencer* court's analysis, the suggestion appears to be that impacting one non-member can be an internal tribal matter, but impacting hundreds may not be. EPA believes that the regulation of water discharges, where

[11] It is difficult to assess the exact number of non-members affected, but relatively easy to gauge the order of magnitude. The populations of the three towns with POTWs discharging into the main stem, Lincoln, Mattawamkeag, and Howland, were 5,587, 830, and 1,435, respectively, in 1994, the most recent census estimate available when Maine submitted its application. The most recent 2000 census figures indicate the towns' populations were 5,221, 825, and 1,362, respectively. Not all these residents are necessarily tied into the POTW, and not all POTW hook-ups correspond directly to use by one or more members of the public. But the ''user'' records for these POTW facilities provide some sense of scale. The Lincoln POTW had approximately 4,200 users, Mattawamkeag had approximately 295, and Howland had approximately 623 as of 2000.

thousands of non-members might be potentially affected, falls well beyond the scope of the *Fellencer* court's delineation of internal tribal matters. Even if EPA only considers the direct effects, the group of non-member facilities is much larger than the single person affected by the tribal decision in *Fellencer*.

Moreover, the *Fellencer* court simplified its analysis of this factor by discounting the interests of the one non-member affected. In a telling footnote to its conclusion that the Nation's ''employment decision has its immediate effect on only one non-tribal member,'' the court makes a cross reference to another of its analytical factors—the ''interest of the State of Maine.'' *Id.* at 710 n. 1. As we discuss in more detail below, the state specifically declined to assert an interest in applying its nondiscrimination laws to protect Ms. Fellencer, which appears to have made it easier for the court to find that the Nation's interests outweighed hers. Where the state adamantly asserts its interest in regulating these dischargers, however, EPA cannot discount the interests of the non-members in the same way.

Use of tribal lands and natural resources: The *Akins* court next found that the stumpage dispute involved ''the commercial use of lands acquired by the Nation with the federal funds it received for this purpose as part of the settlement agreement.'' 130 F.3d at 486. While MICSA in section 1725(b)(1) subjects the southern tribes' ''natural resources,'' including ''timber and timber rights,'' 25 U.S.C. 1722(b), to state jurisdiction ''to the extent and in the manner provided in [MIA],'' the court emphasized that the Act in section 1724(h) also provides that ''natural resources'' shall be managed in accordance with a self-determination contract with the Secretary of the Interior. Therefore, the court concluded that timber rights ''involve[] the regulation and conservation of natural resources belonging to the tribe.'' *Id.* at 488.

EPA does not agree with DOI that this factor weighs ''*completely* in favor of finding this activity to be an internal tribal matter.'' DOI Op. at 13 (emphasis added). The Penobscot and St. Croix Rivers are the waters that have been the focus of the dispute over the state's asserted authority to regulate discharges to Indian Territory waters. Depending on how one defines the boundaries of the Nation's reservation, these rivers originate in, or flow over, around, or through the southern tribes' Indian Territories, or possibly all four, but they also flow through the state. This stands in contrast to *Akins* that concerned trees, which are stationary and clearly the property of the Penobscot Nation.

EPA recognizes that regulation of discharges into these rivers is vitally important to the southern tribes, but unlike the court's assessment of the timber interests at stake in *Akins*, water quality in these rivers is also vitally important to the state and its non-tribal member citizens. Along the stretch of the Penobscot River's main stem that appears to be at the heart of the Nation's reservation as determined by DOI, the river is a critical environmental resource for both the Nation, many of whose members live on Indian Island surrounded by the river, and the non-members who live or work on either side of the river's banks. Unlike the trees in *Akins*, these rivers are a shared resource for tribal members and non-members alike. The fourth factor in the *Akins* test, discussed further below, requires EPA to acknowledge the state's interest in a natural resource in the southern tribes' Indian Territories, at least in this case where the use and enjoyment of that natural resource has such obvious impacts outside the tribes' Indian Territories.

Tribal control over their natural resources: The *Akins* court's third factor appears to be an outgrowth of the second factor discussed above: ''The control of the [stumpage] permitting process operates as a control over the growth, health, and reaping of that resource.'' 130 F.3d at 487. It is notable that the court introduced its detailed discussion of this factor with the following caveat: ''Third, the subject matter, involving tribal lands, appears to have no impact on Maine's environmental or other interests.'' *Id.* at 488. And, as quoted above, the court goes on to observe that MIA section 6204 makes state laws regulating environmental protection applicable to tribal lands. Again, EPA agrees with DOI that the southern tribes have pressing environmental concerns over water quality within their Indian Territories. But the weight of those concerns is not sufficient basis to oust the state from the grant of authority Congress made in MICSA.

Interest of the State of Maine: The fourth *Akins* factor is whether the state has an interest in regulating the subject matter. Although the State of Maine and its municipalities regulate forestry, the *Akins* court made short work of this factor: ''The [stumpage] policy, at least on its face, does not implicate or impair any interest of the state of Maine.'' *Id.* at 487. Maine was not a party to the *Akins* case, nor the *Fellencer* case. In *Fellencer*, the court assessed the state's interest at greater length, noting that ''Maine has a strong interest in protecting all employees against discrimination. * * *'' *Fellencer*, 164 F. 3d at 710. The court went on to summarize its understanding of how this factor applied in both cases:

> In this case, however, the State is not attempting to apply its laws to the Nation's employment decision. To the contrary, the Maine Attorney General ruled long before this case that ''the employment decisions of the Penobscot Nation, when acting in its capacity as a tribal governmental employer, are not subject to regulation by the state[.]'' * * * Maine did not intervene to argue the contrary. In *Akins* we found this posture significant. Even though Akins alleged violations of Maine law, we noted that there was ''*not a dispute between Maine and the Nation* over the attempted enforcement of Maine's laws.'' * * * The state disavows the very ''state interest'' that Fellencer seeks to invoke in support of her private cause of action.

Id. at 710–11 (emphasis in original). And as noted above, the absence of state interest in protecting Fellencer appears to have played a role in the court's assessment of the limited impact its holding had on non-members.

The state's expression of interest in this case is different in degree and kind from the facts in either *Akins* or *Fellencer.* Water quality regulation plays a critical role in how the state promotes the interests of environmental quality and economic development when deciding how to use and protect these major rivers. By its very application to EPA to administer the program, the state is asserting its interest in issuing discharge permits for these waters. EPA has on its record vigorous assertions of the state's interest from virtually every level of state government, including municipal officials, the Commissioner of the Department of Environmental Protection, the Maine Attorney General, and the Governor. In addition, each member of Maine's congressional delegation and several groups and businesses representing the interests of dischargers in the affected area submitted comments supporting the state's application. Further, the Maine legislature has retained direct control over many specific discharge permit requirements, implementing them through statute, rather than delegating most or all of the detailed decisions to the state's Department of Environmental Protection, as is the practice in most other states.[12] Finally, Maine has statutes that specifically address surface water quality classifications for stretches of rivers that may lie in the

[12] *See e.g.*, 38 M.R.S.A. sections 414–A, B, and C, 417, 419, 419–A, and 420.

Indian Territories. *See e.g.*, 38 M.R.S.A. section 467(7). EPA cannot deny the strong interest that the state has shown in regulation of discharges to Indian Territory waters.

Given the state's strong interest in regulating discharges to waters in Maine, the fact that all but three of the discharges to Indian Territory waters are by non-member facilities and all but two have their operations located outside of the Indian Territories by any interpretation of Indian Territory boundaries takes on great significance. Because the facilities are located outside of the Indian Territories, the factor relating to the diminishment of the state's interest and authorities within Indian Territory does not apply. Because they are not tribal or tribal member facilities and are located outside of the Indian Territories, the tribal interest in regulating them is diminished and the state interest increased. The state would have its full inherent authority to regulate the facilities themselves. If EPA found that the state lacked adequate authority to regulate the discharges for purposes of the NPDES program because the discharge points for these facilities were in the Indian Territories, however, it would have a grave effect on the state's very strong interest in regulating the discharges to water by facilities which it otherwise may regulate.

DOI's opinion notes that only a small percentage of the discharges covered by the state's program application are in the southern tribes' Indian Territories. DOI Op. at 15 n. 22. The suggestion appears to be that denying the state's application for these discharges will not substantially impair the state's overall interest in regulating discharges to waters throughout the state. EPA does not agree that this approach adequately characterizes the state's interest in the waters at issue here.

First, this jurisdictional dispute is about the state's authority in the Indian Territories. Therefore, the more relevant analysis is the apportionment of discharges into waters that may lie in those Indian Territories, not the whole state. From this perspective, 19 of the 21 dischargers are non-tribal facilities, and two are tribal.

Even if we look at the entire state, however, the state's interest in these waters is considerable, though the number of permits may be small. The Penobscot River is the state's largest river and its largest watershed; it is literally an artery for the state's economy and a major resource for much of central Maine. Withholding the permitting authority for the discharges along this stretch of the Penobscot River from the state's water quality permitting program would deprive the state of the ability to implement its MEPDES program in a significant portion of a critical waterway. EPA believes that doing so would have a significant effect on the state's interest in this application.

Prior legal understandings: While noting that MICSA creates a unique framework distinct from federal Indian law, the *Akins* court looked to ''[g]eneral federal Indian caselaw'' for support of its conclusion that stumpage permits are an internal tribal matter, because it had ''long presumed that Congress acts against the background of prior law.'' 130 F.3d at 489 (citing *Kolster* v. *INS*, 101 F.3d 785, 787–88 (1st Cir. 1996)); see also *Fellencer*, 164 F.3d at 712 (''a court must take into account the tacit assumptions that underlie a legislative enactment, including not only general policies but also preexisting statutory provisions.'') (quoting *Passamaquoddy Tribe*, 75 F.3d at 789). The *Akins* court cited with approval both a case holding that state taxation of non-Indian activities on tribal lands was preempted, *Akins,* 130 F.3d at 490 (citing *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 144 (1980)), and a case holding that a tribe had the inherent authority to tax non-Indian activities on tribal land as part of its powers of self-government. *Id.* (citing *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130 (1982)). DOI's opinion and the southern tribes' comments summarize the federal Indian case law, which has uniformly upheld inherent tribal authority to regulate water quality under the CWA, including non-member pollution sources. DOI Op. at 16 (citing, inter alia, *Montana* v. *EPA*, 137 F.3d 1135 (9th Cir. 1998)).

The *Akins* court noted that ''[the *White Mountain Apache* and *Merrion*] cases uniformly recognize the importance of the factors we have stressed: that the issue involves matters between tribe members and matters of the economic use of natural resources inherent in the tribal lands.'' 130 F.3d at 489–90. The court contrasted *White Mountain Apache* and *Merrion*, which permitted tribal taxation of non-member timber harvesting and mineral extraction that took place on tribal lands, with *Montana* and *Strate*, which denied tribal jurisdiction over hunting and fishing and torts on non-member lands. *Id.* The court referred to those cases to throw into sharp relief the fact that *Akins* concerned tribal member timber harvesting from tribal lands. Although the court noted that ''tribes retain considerable control over nonmember conduct on tribal land,'' it limited the holding of the case by noting that ''only tribal conduct [was] at issue'' in *Akins. Id.* (quoting *Strate* v. *A–1 Contractors*, 520 U.S. 438, 445 (1997)). The First Circuit focused on its conclusion that tribal control over the conduct of tribal members' use of tribal natural resources was clearly within the scope of inherent tribal authority under general federal Indian law, and was therefore consistent with prior legal understandings. It drew no larger conclusions under MICSA about the regulation of non-members.

The *Fellencer* court did not examine how federal Indian law treats members versus non-members, having disposed of the impact on the non-member Fellencer in its discussion of the previous factors. The *Fellencer* court found ''particularly important'' the prior legal understandings that Title VII of the Civil Rights Act of 1964 (employment discrimination) exempted tribes from its coverage, and that the Indian Civil Rights Act of 1968 granted exclusive jurisdiction to the tribal courts ''because they inform the intent of Congress in the adoption of the Settlement Act.'' *Fellencer*, 164 F.3d at 712. The court's analysis of this factor merges into the following discussion of statutory origins, where the court also examined the support in federal Indian law for tribes preferring Indians in employment decisions.

The tribal regulation of even non-member discharges to Indian Territory waters is consistent with the prior legal understandings against which MICSA was enacted. EPA finds that this factor is outweighed by the other factors. Furthermore, Congress clearly intended to depart from prior legal understandings concerning environmental regulatory authority in these Indian Territories.

Statutory origins of the subject matter: The *Fellencer* court noted an additional factor beyond those addressed in *Akins*: do the statutory origins of the subject matter suggest that tribal control is appropriate? In *Fellencer* the community nurse position was funded under a program where Congress specifically provided for ''an employment preference for Indians in the legislation.'' Id. at 713. DOI and the tribes point out that MICSA itself, 25 U.S.C. 1724(h), provides for the southern tribes to manage their ''land or natural resources'' pursuant to agreements with DOI under the Indian Self-Determination Act, which promotes tribal self-government by transferring federal programs to the tribal governments. But MICSA also uses exactly the same term, ''land or natural resources,'' in section 1725(b)(1) to

describe the areas over which it is giving the state jurisdiction by ratifying MIA. If Congress's use of the Indian Self-Determination Act in MICSA section 1724(h) were meant to be an indication that resource management was internal to the southern tribes and not subject to state regulation, section 1725(b)(1) would be left without much content when it refers to ''land and natural resources.'' On the other hand, it is relatively easy to give both these provisions meaning by concluding that any management agreements for the southern tribes' land and natural resources must also comply with relevant state land use and environmental laws, at least to the extent there are impacts on the state's interests outside the tribes' Indian Territories.

As another argument that the statutory origins weigh in favor of finding discharges to waters to be internal tribal matters, DOI notes that the NPDES program is part of the CWA, and EPA has long interpreted the CWA to embody a preference for tribal regulation of surface water quality on Indian reservations.[13] DOI Op. at 17–18. EPA continues to strongly agree that Congress expressed a preference for tribal programs under the CWA within Indian reservations. But we find that this preference is not analogous to the statutory origins of the nursing position that the *Fellencer* court reviewed. In *Fellencer*, the matter subject to regulation was the employment of a community health nurse. The nurse's position was created under and funded by a federal program designed to promote tribal self-determination through, among other things, Indian employment preferences. *Fellencer*, 164 F.3d at 713. The nursing position at issue owed its very existence to a federal program designed to prefer Indian employment; therefore, it was reasonable to shield that position from state laws that would undo any such preference.

Here, the matters subject to regulation are the discharges to the waters of the Indian Territories by private persons and municipalities. The first goal enumerated in the CWA is to control and eventually eliminate such discharges, not to create them. *See* 33 U.S.C. 1251(a)(1). Although the non-tribal wastewater treatment plants may have received federal funding, the funding was of a general nature aimed at reducing discharge of pollutants to navigable waters, not at promoting tribal self-determination. Unlike the nursing position in *Fellencer*, these discharges exist regardless of the federal government's preference for tribal self-determination, and the federal statutory framework regulating these discharges would not be defeated if an approvable state program is used to control them.

iv. The Great Northern and Georgia-Pacific Cases

The Maine Supreme Judicial Court and the United States Court of Appeals for the First Circuit issued their decisions in the *Great Northern* and *Georgia-Pacific* cases following DOI's issuance of its opinion and the major comments submitted by all the parties. *Great Northern Paper, Inc.* v. *Penobscot Nation,* 770 A.2d 574 (Me. 2001), cert. denied 534 U.S. 1019 (2001); *Penobscot Nation* v. *Georgia-Pacific*, 254 F.3d 317 (1st Cir. 2001), cert. denied 534 U.S. 1127 (2002). The parties hotly dispute the significance of these cases. These cases sprang out of a disagreement between the southern tribes and the paper companies as to whether the state's Freedom of Access Act (FOAA), 1 M.R.S.A. sections 401–410, Maine's counterpart to the federal Freedom of Information Act, applied to the tribes.

In state court, three paper companies sought to require the southern tribes to provide access to tribal governmental documents relating to environmental and water quality regulation. *See Great Northern Paper*, 770 A.2d at 577–80. The companies argued that the southern tribes' status as municipalities under MICSA and MIA requires them to comply with FOAA, just like other political subdivisions of the state. Shortly before the paper companies filed their case in state court, the southern tribes unsuccessfully sought an injunction in federal court to bar the paper companies from interfering with an internal tribal matter in violation of MICSA. The paper companies won access to certain tribal documents in the state courts, and the federal appeals court upheld the federal district court's decision not to enjoin the state court action. *See Georgia-Pacific*, 254 F.3d 317.

The Maine Supreme Judicial Court found that the internal deliberations of the tribes are internal tribal matters, but held that communications with other governments were not: ''the Freedom of Access Act does not apply to the Tribes in the internal conduct of their governments, but does apply when the Tribes communicate and interact with other governments.'' *Great Northern Paper, Inc.,* 770 A.2d at 591. The court decided that the decisions taken within a tribe to petition the federal or state government and the documents generated in the process were internal tribal matters excluded from state regulation. *Id.* at 589. When the tribes acted on that decision by communicating their desire, among other things, to have EPA retain the NPDES program in the Indian Territories, the documents generated in the process of that communication were subject to the FOAA because the communications sought to limit the authority of the state in the Indian Territories and could affect the relationships among the state, the tribes, and the federal agencies. *Id.* at 590. The state asserts that this holding indicates surface water quality regulation cannot be an internal tribal matter.

Opponents of the state point to the limits of these decisions. The state court's decision does not address the underlying question of environmental regulation in the tribes' Indian Territories; it is a decision about access to documents. Moreover, a state court decision is not generally binding on EPA when assessing the scope of internal tribal matters, which the First Circuit has twice held is a question of federal law. Finally, the First Circuit's decision to decline jurisdiction over the dispute is simply a narrow application of the ''well [*i.e.*, properly] pleaded complaint'' rule designed to prevent litigants from transforming defenses under state law into federal causes of action. *Georgia-Pacific,* 254 F.3d at 321–22.

EPA agrees that neither of these cases dictate the outcome of our decision on Maine's application in the southern tribes' Indian Territories. The decision of the Maine Supreme Judicial Court did not find that the internal tribal matters exception is limited to those matters that do not affect non-members. 770 A.2d 574, 590 n. 19. The court also found, however, that because the communications between the tribes and the federal and state governments might have a meaningful effect on the public through EPA's action on the NPDES application, the documents were subject to the FOAA.

[T]he relationship between the state and the Tribes regarding the regulation of water quality within the state is a matter of legitimate interest of the citizens of this state. * * * In sum, because the decisions reached by the Tribes have resulted in actions of a

[13] The clearest statement of Congress's preference for tribal regulation of surface water quality is section 518, which, among other measures, provides for EPA to authorize Indian tribes to administer programs under the CWA, including NPDES programs. 33 U.S.C. 1377(e). The state and some commenters have vigorously argued that the savings clauses in MICSA prevent CWA section 518(e) from applying in Maine. EPA is not acting today on an application from any Maine tribe to implement the NPDES program, therefore, the question of whether section 518(e) operates in Maine is not directly relevant to our decision.

governmental nature that may have a meaningful effect on members of the public who are not members of the Tribes, the provisions of the Freedom of Access Act apply to those actions.

Id. at 590. In its decision, the First Circuit made no findings whatsoever with regard to the scope of internal tribal matters exception to state authority. The federal court refused on grounds of issue preclusion to disturb the decision of the Maine court, stating ''[c]ertainly, nothing in *this* state decision is so implausible as to suggest the need for independent federal reexamination.'' 254 F.3d at 324 (emphasis in original).

v. Existing Tribal Facilities as Internal Tribal Matters

Although EPA cannot embrace the ultimate conclusion of DOI's internal tribal matters analysis, the Agency believes it is important to assess with great particularity how this reservation of the southern tribes' sovereignty applies. As both the Supreme Court and the First Circuit have noted, generalizations on the subject of Indian jurisdiction are ''treacherous.'' *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 141 (1980); *Akins,* 130 F.3d at 487 (''We tread cautiously and write narrowly, for the problems and conflicting interests presented by this case will not be the same as the problems and interests presented by the next case.'') EPA has concluded that regulating the non-member discharges to water with substantial effects on non-members is not an internal tribal matter, but our conclusion is quite different when we analyze the regulation of two existing tribal facilities located within the southern tribes' Indian Territories.

We note at the outset that this analysis is limited to these two existing facilities only. As is common in matters involving tribal jurisdiction, EPA must undertake a careful case-by-case assessment. Based on the facts we have available on this record, we conclude that the *Akins* court's internal tribal matters factor analysis weighs in favor of excluding these two existing tribal discharges from Maine's MEPDES program.

EPA reiterates that it is finding that Maine has adequate authority to implement its MEPDES program in the Indian Territories, including the existing discharges we are assuming lie within those Territories from non-member facilities which do not. Therefore, EPA does not believe it is necessary to delve into the boundary disputes that surround these Indian Territories. Maine's authority within the southern tribes' Indian Territories is limited, however, and cannot reach permits for facilities with discharges that qualify as an internal tribal matter.

While we are not announcing immutable rules for future permitting scenarios, we nevertheless believe that it is possible to suggest some general guidelines that the Agency will employ when assessing whether individual facilities with discharges to waters within the southern tribes' Indian Territories fall within the internal tribal matters exclusion and therefore outside of Maine's approved MEPDES program. EPA expects that permitting facilities owned and operated by non-members, when those facilities have their operations located outside of the southern tribes' Indian Territories, will not be internal tribal matters even where the discharge is to Indian Territory waters. For example, the state has inquired about the status of its general permit program for storm water discharges on lands surrounding the southern tribes' Indian Territories. EPA believes that non-member activities around the southern tribes' Indian Territories would be included in the state's program, both for discharges to non-Indian Territory waters and any discharges of storm water run-off that may reach the southern tribes' Indian Territories.

EPA is not aware of any non-member facilities located entirely within the Indian Territories. EPA expects any possible future non-member activity in the southern tribes' Indian Territories will be subject to negotiated consensual arrangements between the parties for access to the tribes' lands. Therefore, EPA will not present any presumption that might affect such negotiations.

As to tribal or tribal-member facilities located in the Indian Territories that discharge to what may be Indian Territory waters, EPA will carefully assess their impact on non-members and their importance to the tribe involved, as illustrated in the following discussion of the *Akins* factors. For example, if EPA were to conclude that a proposed construction project within a southern tribe's Indian Territory has impacts that are internal to the tribe, EPA would issue the storm water permit for that activity. In any case, EPA believes it can undertake this assessment without defining the boundaries of the southern tribes' Indian Territories, at least with respect to existing dischargers and any likely future activity in or around the tribes' Indian Territories.[14] Our analysis of the effects of the tribal discharges focuses on their environmental impacts on the waters surrounding that discharge regardless of any territorial claim to that water. Here we find the impact so minimal that it matters little whether the tribal outfall lies within or just outside of the tribes' Indian Territories.

EPA has carefully analyzed the First Circuit's factor test as it applies to these two tribal facilities as follows:

Effects on tribal members and non-members: The impacts on non-members from the permitting of these two facilities' discharges are minimal. The two discharges come from waste water treatment facilities serving the Penobscot Nation on Indian Island and the Passamaquoddy Tribe at their Pleasant Point reservation. They are owned by the Penobscot and Passamaquoddy tribal governments, and they exclusively serve the members of each tribe. Therefore, to the extent the conditions EPA places on the discharge affect the users and operators of these facilities, those effects are borne entirely by each of the tribal governments and the tribal members.

To the extent that the conditions EPA places on the discharge affect in-stream water quality downstream of the discharge, including water quality around and downstream from the southern tribes' Indian Territories, EPA acknowledges there is the potential for an impact on non-members outside the Indian Territories. The Agency finds, however, that the discharges from these facilities are quite small, especially in relation to the total volume of the major water ways that receive the discharges.[15] There is one tribal discharge permitted on each of two different reservations, so there is no cumulative effect from a cluster of tribal point sources. Therefore, the likely impact on downstream water quality is extremely limited. In any case, EPA must assure that the discharge permits for these facilities meet the requirements of the CWA, and any downstream impacts will be bounded by those requirements. In the future, if EPA is confronted with a proposed new

[14] The dispute over the ''length'' of the Penobscot reservation includes a disagreement over the status of certain islands upstream from Indian Island. The Nation has submitted arguments and documentation asserting that islands in the west branch of the Penobscot River and in the Piscataquis River, a tributary north of Indian Island, remain in the reservation. Ad. Rec. 5c-30 at 27–30 and Section 10, Ex. 1–6. Theoretically, a future facility located on those islands could lie within the Penobscot reservation. The current prospects for this possibility appear so remote that EPA does not believe it would be appropriate to force a decision about these boundaries to resolve a hypothetical dispute.

[15] See Memorandum from Phil Colarusso re: Review of Discharge Permits for the Passamaquoddy Tribe and Penobscot Indian Nation (Jan. 28, 2003) Ad. Rec. section 4.

tribal discharge that may have substantial effects on water quality beyond the southern tribes' Indian Territories, EPA will assess at that time whether the potential impacts of the new discharge would be sufficiently confined to remain an internal tribal matter.

Use of tribal lands and natural resources and tribal control over their natural resources: The operations of these facilities are entirely contained within the lands of the tribes. The small discharges from these facilities have their most immediate effect on the waters either within or directly adjacent to the southern tribes' reservations. Therefore, managing the impact of those discharges on their Indian Territories is of most immediate concern to the tribes.

Interest of the State of Maine: While Maine has applied to administer the MEPDES program for all the discharges in and around the southern tribes' Indian Territories, *Akins* and *Fellencer* require us to weigh the state's interest in these two permits against the tribes' interests. The practical effect on the state of EPA withholding authority for these permits from the state program is negligible because the environmental impact of these facilities discharges is comparatively immaterial. We have approved the state to issue nearly all of the existing NPDES permits that discharge in or around the southern tribes' Indian Territories. But far more important than the simple number of permits, we have approved the state to issue the permits with the largest discharges that account for the overwhelming bulk of the water quality impacts from point sources in these waters. So we believe the state's remaining interest in securing the issuance of these last two minor discharge permits is relatively slight.

In contrast, the southern tribes' interest in regulating these tribal facilities that provide governmental services to tribal members is enormous. Congress made it clear under MICSA that it was preserving the sovereignty of the southern tribes to a certain extent:

> The treatment of the Passamaquoddy Tribe and the Penobscot Nation in the Maine Implementing Act is original. It is an innovative blend of customary state law respecting units of local government coupled with a recognition of the independent source of tribal authority, that is, the inherent authority of a tribe to be self-governing.

S. Rep. at 29. The facilities attendant to these two remaining discharge permits function as part of the governmental infra-structure on which the southern tribes rely to support the very existence of their communities as independent cultures. It impairs the state's interest in water quality regulation very little to respect the tribes' vital interest maintaining their direct relationship with the federal government in regulating these two operations.

Prior legal understandings: Finding that the regulation of the tribal facilities located in the Indian Territories that discharge to what may be Indian Territory waters is an internal tribal matter is strongly supported by the *Akins* court's presentation of federal Indian law. The court found that general federal Indian law stood for the proposition that the state would generally be preempted from regulating on tribal lands because of the strong federal interest in tribal self-determination. 130 F.3d at 490. These two facilities are owned and operated by the tribal governments and non-members are not involved, so the federal interest in promoting tribal self-determination is very high and is not tempered by any substantial impacts on non-members.

Ambiguity and assessing environmental impacts: EPA concluded that Congress's decision to authorize the state to regulate the environment in the southern tribes' Indian Territories was unambiguous, and that the reservation of internal tribal matters does not reach discharge permits with substantial effects on non-members. But in assessing the status of these two tribal facilities and their discharges, we have concluded that their impacts outside the southern tribes' Indian Territories are so immaterial that the permits fit within the internal tribal matters exception. While there might be some debate over the scope of that impact, in this situation, EPA believes it is appropriate to invoke the doctrine directing us to resolve ambiguities in the meaning of a statute relating to Indian sovereignty in favor of Indian tribes.

Moreover, EPA believes that the Agency's judgment about the scope of the environmental impacts from these facilities is important. While EPA is not assigned the role of implementing MICSA, we are the agency delegated to implement the CWA and, therefore, serve as the federal government's expert on surface water quality regulation and discharge permitting. Thus, EPA believes it falls to us to weigh the environmental effects of these two minor discharges as we sort through the factors the First Circuit has developed to apply the concept of internal tribal matters under MICSA.

Based on a thorough review of MICSA and MIA, their legislative histories, relevant judicial precedent, and the many comments EPA received from all sides of this issue, the Agency concludes that MICSA unambiguously grants the State of Maine adequate authority over discharges to tribal waters to support administration of the MEPDES program in the Indian Territories of the Penobscot Nation and Passamaquoddy Tribe, with the exception of any permits for facilities with discharges that EPA determines are internal tribal matters. EPA has determined that there are currently two tribal facilities that the state cannot adequately regulate, and EPA will retain the NPDES permits for discharges from those facilities.[16]

3. Federal Indian Trust Responsibility in Maine

EPA has received almost as many comments about the nature of our trust responsibility to the Maine tribes as about jurisdiction under MICSA. Again, EPA responds in detail to all those comments in our response to comments document. But we offer here an overview of our analysis because we believe it is an important complement to our conclusion that Maine has adequate authority to administer the MEPDES program in the southern tribes' Indian Territories.

a. Dispute Over the Applicability of the Trust in Maine

The state and some commenters argue that MICSA's savings clauses prevent the trust from applying in Maine. The trust is a doctrine developed under federal common law, and the Maine Supreme Judicial Court has held that the federal law which the savings clauses exclude from Maine includes federal common law. *Stilphen,* 461 A.2d at 488; *but see, Penobscot Nation* v. *Fellencer,* 164 F.3d 706, 709 (1st Cir. 1999) (finding that the trust responsibility compels the application of the canons of Indian treaty construction to MICSA). According to this argument, to the extent the trust doctrine operates for the benefit of Indians, it would violate the savings clauses and cannot apply in Maine.

On the other hand, many parties argue that the trust doctrine requires EPA to protect the Maine tribes and their natural resources. This responsibility cannot be delegated to the state, but is an obligation the federal government must carry out on a government-to-government basis directly with the

[16] EPA will determine whether future point source discharges in the Indian Territories of the southern tribes, including the disputed territories, qualify as internal tribal matters using a case-by-case review of individual permit applications or proposed state permits. This approach will allow the Agency to base its decision on a fully developed administrative record with particularized attention to the facts surrounding each permit application.

affected tribes. According to this argument, it would be inconsistent with the trust doctrine for EPA to authorize the state to assume the NPDES program.

b. Continued Operation of the Trust in Maine

EPA believes that neither set of arguments is completely correct, and the answer lies somewhere in between. As a threshold matter, the argument that the trust doctrine finds no application in Maine defies the terms of MICSA. The statute specifically provides for the federal government to hold land, natural resources, and settlement funds in trust for the southern tribes. See generally 25 U.S.C. 1724. Congress specifically recognized the tribal governments of the Passamaquoddy Tribe and the Penobscot Nation in MICSA. 25 U.S.C. 1721(a) (3) and (4), 1722(h) and (k), and 1726. Therefore, MICSA itself establishes trust resources for which the federal government is responsible and identifies tribal governments with which agencies such as EPA should work on a government-to-government basis consistent with that trust responsibility. This analysis, for example, provides the basis for EPA's extensive consultations with the southern tribes concerning Maine's application. Meeting this general element of our trust responsibility to the Maine tribes in no way affects or preempts the state's jurisdiction under MICSA, and therefore, does not run afoul of any limits in the savings clauses. *See Nance* v. *EPA,* 645 F.2d 701, 710–11 (9th Cir.), cert. denied 454 U.S. 1081 (1981).

Finding that the federal government has a trust responsibility to the southern tribes under MICSA, however, does not compel the conclusion that EPA must withhold the NPDES program approval from Maine pursuant to that responsibility. Indeed, if EPA were to rely on the trust responsibility as a basis for denying Maine's application in the southern tribes' Indian Territories, the state may well be correct that MICSA's savings clauses would prohibit the application of the trust doctrine in such a manner. Under that interpretation, the trust would act as a federal law that ''affects or preempts'' the jurisdiction we believe Congress granted the state under MICSA, precisely the class of federal Indian law the savings clauses are designed to block. When deciphering the more specific content of the trust responsibility in Maine, EPA must apply the trust consistent with applicable federal law, which includes MICSA and its grant to the state of authority in the southern tribes' Indian Territories. *See Shoshone-Bannock Tribes* v. *Reno,* 56 F.3d 1482 (D.C. Cir. 1995); *State of California* v. *Watt,* 668 F.3d 1290, 1324 (D.C. Cir. 1981).

c. The Trust, MICSA, and CWA

Thus, EPA is left to reconcile how to protect the southern tribes' natural resources consistent with the jurisdictional relationship which Congress established in MICSA among the southern tribes, the state, and the federal government. Those natural resources include water and water rights, and this decision involves the NPDES program under the CWA. Therefore, EPA will focus on the interplay between MICSA and the CWA to sort through how the trust applies to those resources.

Although EPA does not agree with DOI's ultimate conclusion about the state's jurisdiction under MICSA, DOI's opinion and the parallel comments from the Maine tribes make an important contribution to our analysis. As DOI points out, MICSA's legislative record is abundantly clear that Congress was not terminating the southern tribes or completely abrogating their sovereignty. Indeed, both committee reports devote entire identical chapters to a discussion of how MICSA is designed to preserve the tribes' culture and to avoid their assimilation into the general population. S. Rep. at 14–17; H.R. Rep. at 14–17.

It is also clear from the terms of MICSA and MIA that the southern tribes' riverine cultures and the natural resources on which they rely are part of the cultural heritage Congress intended to preserve. S. Rep. at 11. MIA specifically reserves the southern tribes' right to take fish within their reservations for their individual sustenance, consistent with that cultural practice. 30 M.R.S.A. section 6207(4). MIA generally leaves it to the southern tribes to regulate their own fishing practices, and establishes a carefully balanced regulatory framework for joint state and tribal regulation of fish and wildlife on the southern tribes' Indian Territories and in certain waters where there are off-reservation impacts. 30 M.R.S.A. sections 6207(3) and (6), and 6212. Moreover, as to ponds under ten acres in surface area and entirely within their Indian Territories, the southern tribes have exclusive jurisdiction to regulate fishing. 30 M.R.S.A. section 6207(1).

Therefore, EPA concludes that both MICSA and MIA reserve to the southern tribes uses of natural resources consistent with the preservation of their culture. In the context of surface water quality regulation, it is especially notable that the statutes specifically protect the tribes' fishing practices. Some commenters, including the state, have suggested that the tribes' right to take fish is essentially unrelated to the water quality on which that fishing resource depends. Ad. Rec. 5a-75, ex. B at 1–6. This argument maintains that the tribes are freed from creel or bag limits when exercising their statutory right, but that right has no implications for the regulation of the natural resources, including the water, which determine the quality of whatever fish an Indian might catch. EPA cannot accept this suggestion for obvious reasons; the right to take fish must mean more than ''the right to dip one's net into the water * * * and bring it out empty.'' *United States* v. *Washington-Phase II,* 506 F.Supp. 187, 203 (W.D. Wa. 1980), aff'd in part and rev'd in part on other grounds 759 F.2d 1353 (9th Cir. 1985), cert. denied 474 U.S. 994 (1985). Correspondingly, the right to take fish for individual sustenance must mean more than the right to reel in fish that expose the tribe to unreasonable health risks. MICSA and MIA make this fishing right a matter of federal law that must be addressed by any authority, be it EPA or the state, charged with regulating the natural resources on which that right depends. *United States* v. *Adair,* 723 F.2d 1394, 1408–11 (9th Cir. 1983), cert. denied 467 U.S. 1252.

The question that remains is what tools are left to EPA under MICSA and the CWA to protect that right? The CWA reserves substantial authority to EPA in states authorized to administer the NPDES program so that the Agency can oversee the state program and ensure its consistency with the CWA. The most obvious authority EPA retains is the ability to object to proposed state NPDES permits that EPA determines violate the CWA. Following an EPA objection, the state must either address EPA's concerns or EPA ultimately takes over issuance of the permit. 33 U.S.C. 1342(d)(2). Where states have authority to promulgate water quality standards, EPA is also charged with reviewing those standards and can object to any standards that do not meet the requirements of the CWA. Again, if the state does not address EPA's objection, EPA ultimately has authority to take over promulgation of such standards. 33 U.S.C. 1313(c)(3). These oversight mechanisms attach to any state program implementing the CWA. They are not unique to programs in Indian country, and EPA's exercise of these oversight mechanisms in no way affects or preempts the jurisdiction or authority Maine has under MICSA and the CWA. No state can claim to have jurisdiction under the CWA to issue NPDES permits

that are inconsistent with the CWA or that are free from potential EPA oversight.

Therefore, EPA concludes that MICSA and the CWA combine to charge EPA with the responsibility to ensure that permits issued by Maine address the southern tribes' uses of waters within the state, consistent with the requirements of the CWA. Fortunately, the state has recently taken actions that suggest Maine is beginning to consider the southern tribes' use of waters in the state and its bearing on how the state should regulate water quality. For example, the state Board of Environmental Protection has recently approved a recommendation for the Maine legislature to reclassify key segments of the Penobscot River and include language specifically requiring that the waters be ''sufficiently free from pollutants so as to protect human health related to subsistence fishing.''[17] Although the Legislature has not made any final decisions on this issue, the proposal is consistent with MICSA's purpose to preserve tribal uses and is an important acknowledgment of those uses and their bearing on state water quality regulation.

But in the event Maine's approach to the tribes' uses shifts, EPA is in a position, consistent with MICSA, CWA, and our trust responsibility, to require the state to address the tribes' uses consistent with the requirements of the CWA. As with any state implementing the CWA for EPA, the state's authority to do so remains contingent on the state program meeting all the Act's requirements. EPA cannot now predict with any particularity how the CWA's requirements will govern particular permitting or implementation issues as they arise under the MEPDES program. Those issues will be ripe for decision when they are presented in the future, with a completely developed factual and administrative record to consider.

This approach to EPA's oversight role does not mean that the tribes will necessarily be completely satisfied with the conclusions EPA reaches about how the CWA applies to particular tribal uses. But it is the Agency's hope and expectation that in consultation with the southern tribes, and working collaboratively with them and the state, the parties over time can sort through the critical question of how best to protect these waters consistent with the CWA and the tribes' right to use them under MICSA and MIA. In every meeting EPA had with the southern tribes or the state, all parties agreed that protecting these great rivers is the common goal we all share. EPA commits to both the southern tribes and the state that it will do what it can to promote that goal.

4. Remainder of Maine's Application to Administer Its MEPDES Program in the Trust Lands of the Micmac and Maliseet

EPA is not acting today on Maine's MEPDES program application as it applies to the trust lands of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs. Therefore, EPA still retains the NPDES permitting program for these areas. As discussed in our prior action on Maine's application, our authority to issue or modify NPDES permits for discharges into waters in the northern tribes' trust lands remains suspended pursuant to CWA section 402(c)(1). *See* 66 FR at 12793. This suspension will remain in effect until the Agency takes final action in these areas or the state agrees to extend the Agency's deadline for action. Unlike the boundaries for the southern tribes' Indian Territories, there is no dispute of which EPA is aware concerning the exact boundaries of the northern tribes' trust lands. These lands were all acquired pursuant to either MICSA for the Maliseet or the Aroostook Band of Micmac Settlement Act for the Micmac. 25 U.S.C. 1724(d)(4); Public Law 102–171, 105 Stat. 1143, 25 U.S.C. 1721 *note*, section 5. Therefore, the boundaries of these trust lands are clearly delineated in recent conveyances noting the meets and bounds and recorded with the Bureau of Indian Affairs and in the appropriate registries of deeds. There are currently no sources holding NPDES permits for outfalls discharging into the northern tribes' trust lands, nor is EPA aware of any proposed facilities requiring such a permit in the near future.

D. Other Federal Statutes

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), an agency must consult with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) (or Tribe if there is no THPO) on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places. On January 12, 2001, EPA approved Maine to administer the NPDES program in areas of the state where the Maine tribes did not dispute state jurisdiction. Prior to that approval, EPA engaged in discussions with the Maine SHPO and sought public comment regarding EPA's determination that approval of the state permitting program would have no effect on historic properties. EPA also held discussions with Indian tribes in Maine regarding approval of the state's NPDES program and historic properties of interest to the tribes.

On July 7, 1999, EPA sought the Maine SHPO's concurrence with its determination that the Agency's approval of Maine's application would have no effect on historic properties in Maine. The Maine SHPO provided EPA with a determination that there would be ''No Historic Properties Affected'' or ''No Adverse Effect'' to historic properties in Maine from EPA's approval, on the condition that DEP provides relevant notice and information regarding draft permits to the SHPO and coordinates with the SHPO. On November 26, 2000, the SHPO and DEP entered into a Memorandum of Understanding (MOU) assuring the SHPO that it would receive the requested notices. This MOU further provides for coordination between DEP and the SHPO to resolve any identified issues to ensure that MEPDES permits will comply with Maine water quality standards and Maine laws protecting historic properties. For those permits with the potential to adversely affect historic properties, DEP and the SHPO agreed to seek ways to avoid, minimize, or mitigate any adverse effects to historic properties stemming from the proposed permit.

During EPA's review of Maine's NPDES application with respect to Indian Territories of the southern tribes, EPA engaged in additional discussions with the southern tribes concerning EPA's view that this approval will have no effect on historic properties of interest to the tribes. During those discussions, and as set forth in a draft Memorandum of Agreement Regarding Tribal Historic Properties in Maine (MOA), EPA committed to use its CWA authorities to help ensure that these tribes will have an opportunity to participate in the consideration of historic properties during administration of the NPDES program by Maine. Subsequent to EPA's prior

[17] Letter from R Wardwell, Chair, Maine Board of Environmental Protection to the Co-Chairs of the Maine Legislature's Joint Standing Committee on Natural Resources re: Reclassification of Waters of the State (December 6, 2002) forwarding ''An Act to Reclassify Certain Waters of the State,'' sections 13 and 29.

approval on January 12, 2001 of Maine's program outside the disputed areas, DEP has consistently provided to the tribes copies of proposed permits that may be of interest to them; if needed, EPA will exercise appropriate oversight authority to help ensure that DEP continues this practice. Where a tribe raises concerns to EPA regarding the potential effects of a proposed permit on historic properties, EPA will follow the procedures described in the draft MOA, or any subsequently negotiated MOA that is acceptable to both EPA and the tribes, to consider potential effects. A copy of this draft MOA is included in the record. As described in the draft MOA, EPA will exercise its CWA authorities to object to proposed permits, or take other appropriate action, in order to address tribal concerns regarding effects on historic properties where EPA finds (taking into account all available information, including any analysis conducted by the tribe) that a proposed permit is inconsistent with the CWA, including water quality standards designed to protect tribal uses. Where EPA objects to a permit, the Agency will follow the permit objection procedures outlined in 40 CFR 123.44 and will coordinate with the appropriate tribe in seeking to have DEP revise the permit. DEP cannot issue a final MEPDES permit over an outstanding EPA objection. If EPA assumes permit issuing authority for a specific permit, it will further consult with the tribe prior to issuing any permit.

EPA has determined that the approval of Maine's application will have no effect on historic properties in Maine. EPA believes that the agreement between DEP and the SHPO as well as the Agency's commitment to follow the procedures in the draft MOA are consistent with and support EPA's determination. In accordance with the ACHP's regulations at 36 CFR 800.5, EPA proposed a No Adverse Effect finding to the southern tribes on July 25, 2003. In a September 3, 2003 letter to EPA, the Penobscot Nation disagreed with EPA's proposed finding. As a result of this disagreement, EPA met with the ACHP to discuss the No Adverse Effect finding, and, on October 8, 2003, transmitted this finding to the ACHP. EPA's October 8, 2003 submission to the ACHP included documents relied upon by the Agency in making its No Adverse Effect finding and responded to the comments made by the Penobscot Nation in its September 3, 2003 letter to EPA. A copy of the October 8, 2003 submission to the ACHP is included in the record. Pursuant to the ACHP's regulations, the ACHP had 15 days from receipt of EPA's finding to review and comment upon the Agency's finding. On October 24, 2003, the ACHP provided comments to EPA. The ACHP's comments express certain disagreements with EPA's approach to analyzing the effects of this action and note that, in addition to considering the effects of the administrative act of approval and transfer of the NPDES program to DEP, EPA should also consider the potential effects flowing from implementation of the approved program itself. The ACHP notes its view that EPA should negotiate a programmatic agreement under the ACHP regulations as an appropriate resolution. A copy of the ACHP's October 24, 2003 comment letter is included in the record.

EPA has carefully considered the ACHP's comments in reaching its decision to approve the state's application as described in this notice. Notwithstanding any difference in EPA's and the ACHP's views regarding the effect of this approval on historic properties, EPA notes that the Agency has, in consultation with the tribes, considered any potential that the administration of the program by DEP might have impacts on such properties. As detailed above, EPA has proposed, and is committed to following, the procedures of the draft MOA which include commitments by EPA to utilize the full extent of its CWA oversight authorities to help ensure appropriate consideration of historic properties, including tribal views, during implementation of the program by DEP. EPA does not believe that resolution of this matter calls for execution of a programmatic agreement. Programmatic agreements are not required under the ACHP's regulations but may be used in certain circumstances described therein. In this case, EPA believes that the procedures and commitments of the draft MOA provide the best means of addressing any concerns regarding the consideration of historic properties during implementation of the program by DEP within the confines of EPA's CWA authority and that a programmatic agreement, which would not provide EPA with any additional oversight authority to act with respect to any particular state permit beyond what is already described in the draft MOA, is unnecessary. In addition, EPA notes that pursuant to the decision of the D.C. Circuit in *National Mining Association* v. *Fowler,* 324 F.3d 752 (D.C. Cir. 2003), individual permitting actions by DEP under the approved program would not trigger NHPA section 106 responsibilities. Having considered the potential impacts of this action on historic properties, consulted with the tribes, provided the ACHP an opportunity to comment and considered those comments, EPA has fulfilled its obligations under the NHPA and the ACHP regulations.

Today's program approval does not include Maine's application as it relates to facilities discharging into the lands of the northern tribes. EPA will address the NHPA in the context of making a final decision on Maine's application as it relates to facilities discharging into the lands of the northern tribes.

Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a state NPDES program submission to constitute an adjudication because an ''approval,'' within the meaning of the APA, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the state's proposed MEPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of state law; it would, therefore, impose no additional obligations upon those subject to the state's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

E. Notice of Decision

EPA hereby provides public notice that the Agency has taken final action authorizing Maine to administer the MEPDES program in the territories of the Penobscot Nation and Passamaquoddy Tribe, with the exception of facilities with discharges that qualify as internal tribal matters, and review of the issues related to this action is available as provided in CWA section 509(b)(1)(D). EPA has not taken final action Maine's application with respect to the issues related to the state's jurisdiction and the applicability of state law in the lands of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs, and review of those issues is not available until EPA takes final action on Maine's program as it applies in those areas.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: October 31, 2003.

Robert W. Varney,

Regional Administrator, Region I.

[FR Doc. 03–28653 Filed 11–17–03; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: December 2, 2003, Washington, DC. The meeting will be held in the Monticello Ballroom (lower level) of the Wyndham Washington Hotel, 1400 M Street, NW, Washington, DC 20005.

Type of Meeting: Open. Further details on the agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday December 3, 2003, at approximately 9 a.m. The PCAST is tentatively scheduled to: (1) Discuss and, pending the discussion, approve a draft report from its information technology manufacturing-competitiveness subcommittee; (2) discuss the preliminary observations and draft recommendations of its workforce-education subcommittee; and (3) continue its discussion of nanotechnology and its review of the federal National Nanotechnology Initiative. This session will end at approximately 4 p.m. Additional information on the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Cynthia Chase at (202) 456–6010, prior to 3 p.m. on Monday, December 1, 2003. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Stanley S. Sokul,

Executive Director, PCAST, and Counsel, Office of Science and Technology Policy.

[FR Doc. 03–28854 Filed 11–17–03; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; to merge with FleetBoston Financial Corporation, Boston, Massachusetts, and thereby indirectly acquire Fleet National Bank, Providence, Rhode Island, and Fleet Maine, National Association, South Portland, Maine.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. DCB Financial Corp., Dallas, Texas, and DCB Delaware Financial Corp., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Dallas City Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, November 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28720 Filed 11–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire Bingham, Osborn & Scarborough LLC, San Francisco, California, and thereby engage in providing investment advisory and financial planning services, pursuant to sections 225.28(b)(6)(i) and (b)(6)(vi) of Regulation Y.

Board of Governors of the Federal Reserve System, November 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–28721 Filed 11–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 16, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 16, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, November 4, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–28758 Field 11–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

Time and Date: 11:30 a.m., Monday, November 24, 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 FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 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.

Board of Governors of the Federal Reserve System, November 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28901 Filed 11–14–03; 12:53 pm]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on September 16, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Disease

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates:

9 a.m.–5 p.m., December 11, 2003

8:30 a.m.–2 p.m., December 12, 2003

Place: CDC, Auditorium B, Building 1, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: Program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. Opening Session: NCID Update.
2. Futures Initiative Update.
3. Emerging Infections Plan Update.
4. Topic Updates:
a. Severe Acute Repiratory Syndrome.
b. Monkeypox.
c. West Nile Virus.
5. Extramural Research Update.
6. Global Health Activities.
7. Topic Updates.
a. Influenza.
b. MRSA.
8. Minority and Women's Health Update.
9. Board meets with Director, CDC.

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2003; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

For Further Information Contact: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NE, Atlanta, Georgia 30333, e-mail: *tjohnson3@cdc.gov*; telephone (404) 498–3249.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 12, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–28725 Filed 11–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10101]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Survey of Medicare Preferred Provider Organization Demonstration *Form No.:* CMS–10101 (OMB# 0938–NEW); *Use:* This information collection will be used to collect information from Medicare Beneficiaries to understand beneficiary experiences with the new managed care option and to understand which Medicare beneficiaries are attracted to the PPO model and why. CMS also wants to know what both enrollees and non-enrollees in PPOs know and understand about this new option; *Frequency:* Other: One-time Only; *Affected Public:* Individuals or Households; *Number of Respondents:* 38,216; *Total Annual Responses:* 38,216; *Total Annual Hours:* 9,556.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 7, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–28709 Filed 11–17–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–901, CMS–2744, CMS–2746]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Qualification Application: Medicare+Choice Application for HMOs, PPOs, and State Licensed PSOs; Medicare+Choice Application for Federally Waived PSOs; Medicare+Choice Application for Medicare Savings Account Entities; Medicare+Choice Application for Private Fee-for-Service Plans; *Form No.:* CMS–901 (OMB# 0938–0470); *Use:* Prepaid health plans must meet certain regulatory requirements to be federally qualified health maintenance organizations or to enter into a contract with CMS to provide health benefits to Medicare beneficiaries. The application is the collection form to obtain the information from a health plan that will allow CMS staff to determine compliance with the regulations; *Frequency:* Other: One-time submission; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 5,500.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Information System ESRD Facility Survey and Supporting Regulations in 42 CFR 405.2133; *Form No.:* CMS–2744 (OMB# 0938–0447); *Use:* The ESRD Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:*

4,360; *Total Annual Responses:* 4,360; *Total Annual Hours:* 34,880.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification, P.L. 95–292; 42 CFR 405.2133; 45 CFR 5, 5b; 20 CFR Parts 401, 422E; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* The ESRD Death Notification is to be completed upon the death of ESRD patients. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients; *Frequency:* Other: One-time (patient death); *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 4,360; *Total Annual Responses:* 69,760; *Total Annual Hours:* 34,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 7, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–28710 Filed 11–17–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS).

ACTION: Notice to delete 3 systems of records.

SUMMARY: CMS proposes to delete 3 systems of records from its inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATES: The deletions will be effective on November 3, 2003.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

SUPPLEMENTARY INFORMATION: Whenever the Centers for Medicare & Medicaid Services (CMS), proposes to modify or delete an SOR, we are required by the Privacy Act to publish a notice in the **Federal Register** and provide a period of time during which the public may comment. We must also report the proposed action to the Office of Management and Budget (OMB) and Congress.

CMS is deleting from its inventory of Systems of Records the records listed below because they are no longer needed. The projects have ended. Records will be disposed of in accordance with a National Archive and Records Administration (NARA) approved schedule.

Systems To Be Deleted

System No. 09–70–0045, ''Evaluation of the Arizona Health Care Cost Containment & LTC Systems Demo (EAHCCC),'' HHS/CMS/ORDI;

System No. 09–70–0049, ''Evaluation of the HHA Prospective Payment Demo (EHHAPD).''

HHS/CMS/ORDI; System No. 09–70–0063, ''Evaluation of the Medicaid Demo for Improving Access to Care for Substance Abusing Pregnant Women,'' HHS/CMS/ORDI.

Dated: November 3, 2003.

Thomas A. Scully,

Administrator.

[FR Doc. 03–28719 Filed 11–17–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: HHS/ACF Rural Welfare-to-Work Strategies Demonstration Evaluation Project 30-Month Survey.

OMB No.: New Collection.

Description: The Rural Welfare-to-Work Strategies Demonstration Evaluation Project, which was developed and funded by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS), is a national evaluation to determine the benefits and cost-effectiveness of methods designed to aid current or former Temporary Assistance for Needy Families (TANF) recipients or other low-income families as they transition from welfare to the employment arena. This evaluation addresses four research questions:

- What are the issues and challenges associated with operating the new welfare-to-work services and policy approaches being studied?
- How effective are the welfare-to-work programs under the project in increasing employment and earnings and in improving other measures?
- What are the net costs of the welfare-to-work programs, and do the programs' benefits outweigh the costs?
- What approaches should policymakers and program managers consider in designing strategies to improve the efficacy of welfare-to-work strategies for families in rural areas?

The evaluation employs a multi-pronged approach to answer the research questions. These approaches include: (1) An impact study, which will examine the differences between control and intervention groups with respect to factors such as employment rates, earnings, and welfare receipt; (2) a cost-benefit analysis, which will calculate estimates of net program cost-effectiveness; and (3) an in-depth process study, which will identify implementation issues and challenges, examine program costs, and provide details on how programs achieve observed results. The data collected during the conduct of this study will be used for the following purposes:

- To study rural welfare-to-work programs' effects on factors such as employment, earnings, educational attainment, and family composition;
- to collect data on a wider range of outcome measures—such as job acquisition, retention, and advancement; job quality; educational attainment; and employment barriers—than is available through welfare or unemployment insurance records, in order to understand how individuals are being affected by the demonstration programs;
- to support research on the implementation of welfare-to-work programs across sites;

• to obtain participation and service use information important to the evaluation's cost-benefit component; and

• to obtain contact information for a future follow-up survey that will be important to achieving high response rates for that survey.

Respondents: The respondents to the 30-month follow-up survey are current and former TANF recipients, or individuals in families at risk of needing TANF benefits (working poor, hard-to-employ) from the two states participating in the evaluation (Illinois and Nebraska). The survey will be administered to both intervention and control groups in each participating site. The estimated sample size for the survey is 984 individuals, including projected samples of 504 in Illinois and 480 in Nebraska. The survey will be conducted primarily by telephone, with field interviews conducted with those individuals who cannot be interviewed by telephone. OMB already approved the process evaluation component and 18-month follow-up survey for this study.

Note: Tennessee has been dropped from the study due to difficulties in recruiting participants to their program. Therefore, the estimated burden is smaller than the one in the first notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of esponses per respondent	Average burden hours per response	Total burden hours
30-month follow-up survey	246	1	30 minutes or .5 hours	123

Estimated Total Annual Burden Hours: 123

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *lauren__wittenberg@omb.eop.gov.*

Dated: November 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–28759 Filed 11–17–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0300]

Determination That Diclofenac Potassium 25-Milligram Tablet Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that diclofenac potassium 25-milligram (mg) tablet (Cataflam) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for diclofenac potassium 25-mg tablet.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness § 314.62 (21 CFR 314.162)). Regulations also provide that the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On June 27, 2003, The Weinberg Group, Inc., submitted a citizen petition (Docket No. 2003P–0300/CP1) under 21 CFR 10.30 to FDA requesting that the agency determine whether diclofenac potassium 25-mg tablet was withdrawn from sale for reasons of safety or effectiveness. Diclofenac potassium 25-mg tablet is the subject of NDA 20–142, approved in 1993 and held by Novartis Pharmaceuticals Corp. (Novartis). Diclofenac potassium is used for the treatment of osteoarthritis and rheumatoid arthritis. FDA has determined that shortly after the approval of NDA 20–142, Novartis made the decision not to market diclofenac potassium 25-mg tablet in the United States. It was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book. FDA has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is

equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under § 314.161, has determined that diclofenac potassium 25-mg tablet was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list diclofenac potassium 25-mg tablet in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to diclofenac potassium 25-mg tablet may be approved by the agency.

Dated: November 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28742 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Anesthetic and Life Support Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 8, 2003 (68 FR 58115). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 8, 2003, FDA announced that a meeting of the Anesthetic and Life Support Drugs Advisory Committee would be held on November 18 and 19, 2003. On pages 58115–58116, in the third column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: On November 18, 2003, the committee will discuss the evaluation and communication of risk related to QTc prolongation by Droperidol (INAPSINE) Akorn, Inc.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 14, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–28870 Filed 11–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs 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: Cardiovascular and Renal Drugs 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 December 8, 2003, from 8:30 a.m. to 5 p.m. and on December 9, 2003, from 8 a.m. to 4:30 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 8, 2003, the committee will discuss whether aspirin should be recommended for primary prevention of myocardial infarction. Professional labeling for aspirin currently recommends its use for prevention of a second myocardial infarction. On December 9, 2003, the committee will discuss new drug application (NDA) 21–526, proposed trade name Ranexa (ranolazine) 375 milligrams (mg) and 500 mg Tablets, CV Therapeutics Inc., for the proposed indication of treatment of chronic stable angina.

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 December 2, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 2, 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 Dornette Spell-LeSane 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: November 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–28686 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management 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: Drug Safety and Risk Management 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 December 4, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up to date information on this meeting. Background materials for this meeting, when available, will be posted on the Web site 1 business day before the meeting at: *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Agenda: The committee will discuss current screening methods to assess sound alike and look alike proprietary drug names, in order to reduce the incidence of medication errors resulting from look alike and sound alike names. This advisory committee meeting is in followup to the FDA, Institute for Safe Medication Practices, and the Pharmaceutical Research and Manufacturers of America public meeting on the same subject, held on June 26, 2003.

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 November 24, 2003. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 24, 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 Shalini Jain 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: November 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–28685 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food 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: Food 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 December 10, 2003, from 9:30 a.m. until 4:30 p.m. and on December 11, 2003, from 8:30 a.m. to 4 p.m.

Location: Hotel Washington, Pennsylvania Ave. at 15th St. NW., Washington, DC 20004–1099.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The purpose of the meeting is to review reports of the Dietary Supplements, Additives and Ingredients, Food Biotechnology, Contaminants and Natural Toxicants, and Infant Formula Subcommittees and to provide a status report and response to the Food Advisory Committee's recommendations on methyl mercury in fish and shellfish.

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 November 26, 2003. Oral presentations from the public on the subcommittee reports will be scheduled between approximately 11:30 a.m. and 12 noon on December 10, 2003, and from 9:15 a.m. and 12:15 p.m. on December 11, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 26, 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 Catherine DeRoever 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: November 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–28684 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs 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: Oncologic Drugs 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 December 16, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776 or e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) General issues on clinical trial design and endpoints; and (2) non-small cell lung cancer endpoints as a follow-up to issues discussed at an April 15, 2003, FDA workshop.

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 December 9, 2003. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and between approximately 2:30 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 9, 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 Trevelin Prysock at 301–827–7001 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: November 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–28687 Filed 11–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Methods of Diagnosis of Colorectal Cancer, Compositions and Methods of Screening for Modulators of Colorectal Cancer

Thomas Ried and Madhvi Upender (NCI).

U.S. Provisional Application No. 60/340,124 filed 13 Dec 2001 (DHHS Reference No. E–206–2003/0–US–01); U.S. Patent Application No. 10/318,578 filed 12 Dec 2002 (DHHS Reference No. E–206–2003/0–US–02).

Licensing Contact: Catherine Joyce; (301) 435–5031; *joycec@mail.nih.gov.*

Oncogene activation by gene amplification is a major pathogenetic mechanism in human cancer. Comparative genomic hybridization and DNA microarray expression profiling was used to examine the expression of over 2000 genes that were identified as residing on chromosome arms that were amplified in metastatic colon cancer cancers *i.e.* 7p, 8q, 13q, and 20q. The results indicated that amplified genes that also demonstrate increased expression levels are quite rare. However, the results also identified 93 genes, which reside on the chromosome arms in question, which showed an increased expression level concomitant with amplification. Some of these genes could provide targets for therapy.

As a result of the above findings, the inventors contemplate methods of diagnosing colon cancer through detection of the increased expression of one or more of the identified 93 genes. Aspects of this work have been published as follows: Platzer *et al.*, 2002, Silence of Chromosomal Amplifications in Colon Cancer, *Cancer Research* 62:1134–1138.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Compositions and Methods for Detecting Abnormal Cell Proliferation

Lance Liotta *et al.* (NCI).

U.S. Provisional Application No. 60/466,154 filed 28 Apr 2003 (DHHS Reference No. E–253–2002/0–US–01).

Licensing Contact: Catherine Joyce; (301) 435–5031; *joycec@mail.nih.gov.*

The invention relates to the discovery that class 5 semaphorins are linked to cancer. A *Drosophila* model system was used to identify genes that functionally alter tumorigenicity or metastasis. Deletion of *Drosophila* lethal giant larvae (l(2)gl) leads to highly invasive and widely metastatic tumors on transplantation into adult flies. Random homozygous P element insertions were screened for the ability to modulate the l(2)gl phenotype. Analysis of metastasis patterns of the lines containing P element insertions and lacking wild-type l(2)gl expression identified Semaphorin 5c (Sema 5c) as being required for tumorigenicity.

Semaphorin 5c, is a transmembrane protein with a large extracellular domain that contains seven thrombospondin type I (Tsp I) repeats. The semaphorin 5c gene belongs to the class 5 group of semaphorins, which are transmembrane proteins with short cytoplasmic (C-terminal) tails and extracellular domains containing seven thrombospondin type I repeats, a plexin domain, and a semaphorin domain sequences. Class 3 semaphorins, previously linked to cancer, are structurally different from class 5, lacking the thrombospondin repeats present in the transmembrane class 5 semaphorins.

The invention is a screening method using *Drosophila* to (a) screen for functional important genes associated with cancer growth, invasion and metastasis, and (b) screen for the effects of an anti-cancer targeted therapy by administering the therapy to the drosophila host bearing the tumor. In addition the invention covers a specific gene Semaphorin 5c which is a potential therapeutic target acting in the TGFbeta pathway.

As part of the invention, the inventors contemplate the following:

(i) a method of detecting an increased risk for abnormal cellular proliferation in a subject via detection of overexpression of the Sema 5 gene product;

(ii) methods and compositions for treating abnormal cellular proliferation in a subject by administering a molecule that decreases or prevents expression of a Sema 5 gene product or a molecule that binds to Sema 5 antigen on the surface of the cell and targets the cell for destruction.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Novel Antisense Oligonucleotides Targeting Folate Receptor Alpha

Mona S. Jhaveri, Patrick C. Elwood, Koong-Nah Chung (NCI).

U.S. Provisional Application No. 60/274,249 filed 09 Mar 2001 (DHHS Reference No. E–321–2000/0–US–01).

Licensing Contact: Catherine Joyce; 301/435–5034; *joycec@mail.nih.gov.*

Ovarian cancer is the fifth leading cause of cancer death for women in the United States. Drug resistance of ovarian tumors to chemotherapy is a common problem resulting in only 20 to 30 percent overall 5-year survival rates. Folate is a vitamin that is absolutely necessary for cell survival. Some cancer cells, including ovarian carcinomas, have an abundance of a folate-binding protein termed the human alpha folate receptor (ahFR). It is believed that the elevated levels of ahFR contribute to the cells' cancerous state by mediating increased folate uptake or by generating positive regulatory growth signals. This invention comprises a genetic therapy that diminishes the levels of ahFR using antisense oligonucleotides that block the transcription of the gene. Studies have shown that this invention significantly decreases proliferation of cultured cancer cells and sensitizes these cells to treatment with chemotherapeutic drugs. Further development of receptor-targeted antisense oligonucleotides and related compounds have potential therapeutic value for a range of difficult-to-treat cancers including cancers of the ovary, cervix, uterus, and brain.

Dated: November 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28788 Filed 11–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Compositions and Methods for Enhancing Differential Gene Expression

I Horikawa, JC Barrett (NCI).

DHHS Reference No. E–008–2001/0–US–01 filed 05 Jun 2003.

Licensing Contact: Susan S. Rucker; 301/435–4478; *ruckersu@mail.nih.gov.*

This application describes compositions and methods useful in enhancing the differential expression of heterologous nucleic acids. In particular, the application claims inventions that encompass artificial promoters derived from the human telomerase reverse transcriptase promoter (hTERT) and their use. More particularly, this application describes artificial hTERT promoters that minimize the expression of a heterologous nucleic acid sequences operably linked thereto in normal cells while providing for high levels of expression of the heterologous nucleic acid in cancer cells. The heterologous nucleic acid sequence preferentially encodes a product that will have cytotoxic activity upon expression in the cell.

The hTERT promoter has been characterized and research has demonstrated that small portions thereof are responsible for the cancer-specific expression of the hTERT gene. The cancer-specific nature of hTERT promoter activity suggests that it is a target for the development of specific anti-cancer therapeutics and other strategies for cancer treatment.

In order to improve therapeutic strategies for delivering cytotoxic nucleic acid sequences that are expressed in cancer cells artificial hTERT promoters have been constructed that, when operably linked to the cytotoxic nucleic acid sequence, minimize expression of the cytotoxic nucleic acid sequence in normal cells while maintaining high levels of expression of the cytotoxic nucleic acid sequence in cancer cells. This differential regulatory control is accomplished by operably linking particular E-box nucleic acid sequences in cis with the regulatory elements of the hTERT promoter associated with gene expression in cancer cells and a nucleic acid sequence encoding a product that is cytotoxic upon expression. Cytotoxic substances include, for example, *Pseudomonas* exotoxin (polypeptide toxin), HSV thymidine kinase (pro-drug converting) or bax (apoptosis inducing).

Experimental work related to this invention has been published at Horikawa, I *et al.*, Mol Biol Cell 13(8): 2585–97 (Aug 2002).

Leukoregulin, An Antitumor Lymphokine, and Its Therapeutic Uses

JH Ransom (NCI), RP McCabe, M Haspel, N Pomato.

U.S. Patent Application No. 06/906,353 filed 11 Sep 1986, which issued as U.S. Patent 4,849,506 on 18 Jul 1989 (DHHS Reference No. E–537–1983/2–US–01); U.S. Patent Application No. 07/350,879 filed 11 May 1989, which issued as U.S. Patent 5,082,657 on 21 Jan 1992 (DHHS Reference No. E–970–1997/0–US–01).

Licensing Contact: Susan S. Rucker; (301) 435–4478; *ruckersu@mail.nih.gov.*

These patents claim compositions and methods for using the lymphokine/cytokine known as leukoregulin. In particular, leukoregulin is useful in methods of treating cancer. The NIH is the exclusive licensee of these patents.

Leukoregulin, a cytokine derived from T lymphocytes, is a glycoprotein hormone. Leukoregulin interacts with target cells to regulate cellular activity with its effects being pleiotrophic and dependent on the type of target cell. Among other roles, leukoregulin has been demonstrated to influence the synthesis of collagenase, stromelysin-1, collagen, and hyaluronan in human fibroblasts. These properties make it important in maintaining the

extracellular matrix. Leukoregulin can be used alone or in combination with chemotherapeutic agents. Experimental evidence suggests that leukoregulin in combination with chemotherapeutic agents will improve the activity of the chemotherapeutic agent without additional toxicity.

This work has been published at Ransom, JH *et al.* Cancer Res 45(2): 851–62 (Feb 1985) and Ransom JH, *et al.* Adv Exp Med Biol 184: 281–7 (1985).

Dated: November 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28789 Filed 11–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; 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 State of California (FEMA–1498–DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: October 27, 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 October 27, 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 State of California resulting from wildfires on October 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 State of California.

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 Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, Hazard Mitigation and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

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, William L. Carwile, III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Los Angeles, San Bernardino, San Diego, and Ventura Counties for Individual Assistance and debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of California 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28744 Filed 11–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; Amendment No. 1 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 California (FEMA–1498–DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: October 30, 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 California 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 October 27, 2003:

Riverside County for Individual Assistance and debris removal (Category A) and 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28745 Filed 11–17–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; 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 California (FEMA–1498-DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: November 12, 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 California is hereby amended to include Categories C through G under the Public Assistance Program for 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 October 27, 2003:

San Bernardino, San Diego and Ventura Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and debris removal (Category A) and 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28746 Filed 11–17–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Amendment No. 10 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 Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: November 7, 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 Commonwealth of Virginia is hereby amended to include 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 September 18, 2003:

Highland County for Public Assistance.

Fauquier and Shenandoah Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28743 Filed 11–17–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1499–DR]

Washington; 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 State of Washington (FEMA–1499–DR), dated November 7, 2003, and related determinations.

EFFECTIVE DATE: November 7, 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 November 7, 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 State of Washington, resulting from severe storms and flooding on October 15–23, 2003, 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 State of Washington.

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 Individual Assistance in the designated areas and Hazard Mitigation throughout the State, 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 Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for

Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

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, Anthony Russell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Okanogan, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties for Individual Assistance.

All counties within the State of Washington 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–28747 Filed 11–17–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: These appointments are effective on November 18, 2003.

FOR FURTHER INFORMATION CONTACT: Carolyn Cohen, Director of Personnel Policy, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

2003 SES Performance Review Board

The following individuals have been appointed to serve on the Department of Interior 2003 Performance Review Board.

Kevin Adams—Assistant Director—Law Enforcement Services
Carol Aten—Chief, Office of Administrative Policy and Services
Mary Jo Baedecker—Chief Scientist for Hydrology
Henri Bisson State—Director—Alaska
William Carswell—Regional Hydrologist
Walter D. Cruickshank—Deputy Director, Minerals Management Service
Elena Daly—Director, National Landscape Conservation System
John DeDona—Deputy Assistant Inspector General for Investigations
Kimberly Elmore-Butterfield—Deputy Assistant Inspector General for Audits
Michael Gabaldon—Director, Policy Management
Jerold Gidner—Director, Policy, Planning and Performance
Rick Gold—Regional Director ''Lower Colorado
Linda Gundersen—Chief Scientist for Geology Eastern Region
Pamela K. Haze—Deputy Director, Office of Budget
Matthew J. Hogan—Deputy Director
Fay Iudicello—Director, Office of Executive Secretariat and Regulatory Affairs
Marilyn Johnson—Human Capital Management Project Director
Al Klein Regional—Director ''Western Regional Coordinating Center
Robert LaBelle—Deputy Associate Director Offshore
Elaine Marquis-Brong—State Director, Oregon
Matthew McKeown—Associate Solicitor (Land and Water Resources)
Thomas Moyle—Deputy Assistant Inspector General for Administrative Service and Information Management
Donald Murphy—Deputy Director
Glenda Owens—Deputy Director
Mamie Parker—Regional Director '' Hadley
Lynn Peterson—Regional Solicitor (Portland)
William Rinne—Director, Operations
Denise E. Sheehan—Assistant Director '' Budget, Planning and Human Resources
Margaret Sibley—Senior Advisor
George T.C. Skibine—Director, Office of Indian Gaming Management
J. Lynn Smith—Human Resources Program Manager
Michael Soukup—Associate Director '' Natural Resource Stewardship and Science
Willie R. Taylor—Director, Office of Environmental Policy Compliance
Karen Taylor-Goodrich—Associate Director ''Resource and Visitor Protection
George Triebsch—Associate Director '' Policy and Management Improvement
Michael J. Trujillo—Deputy Assistant Secretary for Human Resources & Workforce Diversity
Kathleen Wheeler—Special Assistant
Michael Wood—Assistant Inspector General for Administrative Service and Information Management

Dated: November 12, 2003.

David Anderson,

Associate Director of Personnel Policy.

[FR Doc. 03–28726 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; NEPA Compliance Checklist

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. You may obtain copies of the collection requirement, related forms, or explanatory material by contacting the person listed below under **FOR FURTHER INFORMATION CONTACT**.

DATES: Interested parties must submit comments on or before January 20, 2004.

ADDRESSES: Interested parties should send comments on the information collection by mail to Information Collection Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; by fax to (703) 358–2269; or by e-mail to *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kim Galvan, voice (703) 358–2420, fax (703) 358–1837, or e-mail *kgalvan@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on

information collection and recordkeeping activities (see 5 CFR 1320.8(d)). 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.

We will submit a request to OMB to renew its approval of the collection of information associated with the NEPA Compliance Checklist. The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Clean Vessel Act (33 U.S.C. 1322, 16 U.S.C. 777c), the Sportfishing and Boating Safety Act (16 U.S.C. 777g–l), North American Wetlands Conservation Act (16 U.S.C. 4401–4412), the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951 *et seq.*), and through other Acts and authorities. The Service uses the information collected on the NEPA Compliance Checklist to determine whether a grantee complies with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347, 40 CFR 1500–1508). The State or other grantee uses the checklist as a guide to general NEPA requirements, and the checklist becomes an administrative record to meet their assurances requirements for receiving a grant.

Certain grant applicants must provide the information requested on the NEPA Compliance Checklist in order to qualify to receive benefits in the form of grants for purposes outlined in the applicable law. This form is designed to cause the minimum impact in the form of hourly burden on respondents and still obtain all necessary information. Only about 3 percent of the Service's applicants for either a new grant or for an amendment to an existing grant will meet the criteria and need to complete the NEPA Compliance Checklist. The checklist needs to be prepared when (a) The proposed action is not completely covered by a categorical exclusion (*e.g.*, the proposal cannot meet the qualifying criteria in the categorical exclusion, and ''is not'' will be checked on the Checklist); (b) The proposed action cannot be categorically excluded because an exception to the categorical exclusion applies (*e.g.*, a ''Yes'' will be checked on the Checklist); (c) Environmental conditions at or in the vicinity of the site have materially changed, affecting the consideration of alternatives and impacts (applicable to amendments and renewals); (d) There is a need to document a normally categorically excluded action that may be controversial; or (e) Additional internal review and/or documentation of the NEPA administrative record are desirable.

The current OMB control number for this information collection is 1018–0110, and the OMB approval for this collection expires on March 31, 2004. We are requesting a three year term of approval for this information collection activity.

Title: NEPA Compliance Checklist.

OMB Control Number: 1018–0110.

Frequency of Collection: Annually.

Description of Respondents: The 50 U.S. States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Indian Tribal Governments, local governments, and others receiving grant funds.

Annual Burden Estimates:

Name	Completion time (per checklist)	Annual number of responses	Total annual burden hours
Checklist	½ hour	160	80

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of 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.

Dated: November 7, 2003.

Anissa Craghead,

Service Information Collection Officer.

[FR Doc. 03–28689 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting, Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Summary of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management ACT (FLMPA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held December 3, 2003 at the Holiday Inn, in Great Falls, Montana. The meeting will begin at 8 a.m. with a one-hour public comment period. The meeting is scheduled to adjourn at approximately 5:30 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in north central Montana. At this meeting, the RAC will consider these topics, which deal with the Blackleaf Project along the Rocky Mountain Front:

A BLM/U.S. Forest Service update
A report from Startech Energy
An update on cultural/Native American interests
A presentation by environmental/recreation interests
A report from a Teton County Commissioner
An update from Montana Fish, Wildlife and Parks
The RAC will then participate in a question/answer period with the presenters
The RAC will then consider making recommendations concerning this project
The RAC will then address administrative issues (next meeting date/location)

All meetings are open to the public. The public may present written

comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, or have questions about this meeting should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Lewistown Field Manager, Airport Road, PO Box 1160, Lewistown, MT 59457, (406) 538–7461.

Dated: November 12, 2003.

Chuck Otto,

Associate Field Manager, Renewable Resources.

[FR Doc. 03–28727 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion for Southern Steelhead Trout, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of comment period on Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation, the lead Federal agency, and Cachuma Operations and Maintenance Board (COMB), the State lead agency, are extending the comment period for 15 days on the Draft EIS/EIR. The original notice was published in the **Federal Register** on July 24, 2003, (68 FR 43748).

DATES: Public comments on the Draft EIS/EIR are to be submitted on or before September 30, 2003.

ADDRESSES: Address written comments on the Draft EIS/EIR to Mr. David Young, Bureau of Reclamation, 1243 N Street, Fresno, California 93721; or to Ms. Kate Rees, 3301 Laurel Canyon Road, Santa Barbara, California 93105–2017.

FOR FURTHER INFORMATION CONTACT: Mr. David Young, Reclamation, at 559–487–5127, for the hearing impaired at 559–487–5933, or by email *dkyoung@mp.usbr.gov.* You may also contact Ms. Kate Rees, COMB, at 805–569–1391 or by email *krees@cachuma-board.org.*

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 15, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–28728 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Battle Creek Salmon and Steelhead Restoration Project, Tehama and Shasta Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of time for review of Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation), the lead Federal agency; the Federal Energy Regulatory Commission, a cooperating Federal agency and the State Water Resources Control Board, the State lead agency, are extending the review period for the Draft EIS/EIR to October 16, 2003. The notice of availability of the Draft EIS/EIR and notice of public workshop and notice of public hearing was published in the **Federal Register** on July 18, 2003 (68 FR 42758). The public review period was originally to end on September 16, 2003.

DATES: Public comments on the Draft EIS/EIR are to be submitted on or before October 16, 2003.

ADDRESSES: Written comments on the Draft EIS/EIR are to be addressed to Ms. Mary Marshall, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825 and to Mr. Jim Canaday, State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Marshall, Reclamation, at (916) 978–5248, TDD (916) 978–5608, e-mail: *mmarshall@mp.usbr.gov* or Mr. Jim Canaday, SWRCB, at (916) 341–5308, e-mail: *jcanaday@waterrights.swrcb.ca.gov.*

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 4, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–28729 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0094 and 1029–0098

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: Comments must be submitted on or before December 18, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory

information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtreleas@smre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR part 700, General; and 30 CFR part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. OSM is requesting a 3-year term of approval for these information collection activities.

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 number for these collections of information are 1029–0094 for Part 700 and 1029–0098 for Part 769.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on July 11, 2003 (68 FR 41400). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: General, 30 CFR Part 700.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 6.

Total Annual Burden Hours: 84.

Title: Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, 30 CFR part 769.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Decription of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 950.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OAIR__Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

Dated: September 17, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–28779 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0119

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for the Abandoned Mine Land Contractor Information form, previously approved by the Office of Management and Budget (OMB) and assigned clearance number 1029–0119. This collection request has been forwarded to OMB for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 18, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for the Abandoned Mine Land Contractor Information form. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This form was previously approved by OMB and assigned clearance number 1029–0119. This collection is found in the Applicant/Violator System (AVS) handbook and is prepared by AML contractors to ensure compliance with 30 CFR 874.16

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on June 16, 2003 (68 FR 35701). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: AML Contractor Information Form.

OMB Control Number: 1029–0119.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) a the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed

by OSM's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. This form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal regulatory authorities.

Total Annual Responses: 360.

Total Annual Burden Hours: 456.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, the following addresses.

ADDRESSES: Submit comments to the Desk Officer for the Department of the Interior, OMB–OPIRA, by fax at (202) 395–6566 or via e-mail to *OIRA_DOCKET@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: August 18, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–28780 Filed 11–17–03; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–373 and 731–TA–770–775 (Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty order on stainless steel wire rod from Italy and the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on stainless steel wire rod from Italy and the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2003, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (68 FR 45277, August 1, 2003) was adequate. The respondent interested party group responses concerning stainless steel wire rod from Italy and Korea were found by the Commission to be adequate but the respondent interested party group responses concerning stainless steel wire rod from Japan, Spain, Sweden, and Taiwan were found by the Commission to be inadequate. The Commission also determined that other circumstances warranted conducting full reviews of all subject orders. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 12, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28762 Filed 11–17–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–036]

Sunshine Act Meeting; Notice

AGENCY: International Trade Commission.

TIME AND DATE: November 21, 2003 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1021 (Final) (Malleable Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 3, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28878 Filed 11–14–03; 11:14 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Test and Diagnostics Consortium, Inc.

Notice is hereby given that, on October 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Test and Diagnostics Consortium, Inc. (''TDC'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AAI Corporation, Hunt Valley, MD; BAE Systems North America, Rockville, MD; Giga-tronics Incorporated, San Ramon, CA; Ideal Aerosmith Inc., East Grand Forks, MN; Symtx, Inc., Austin, TX; Tel-Instrument Electronics Corp., Carlstadt, NJ and The Math Works, Natick, MA have been added as parties to this venture. Also, Freightliner Corporation, Portland, OR; Racal Instruments, Inc., Irvine, CA; AlliedSignal Aerospace Canada, Etobicoke, Ontario, Canada; DME Corporation, Fort Lauderdale, FL; Marconi Integrated Systems, San Diego, CA; Aeronautical Radio, Inc. (ARINC), Annapolis, MD; Agilent Technologies, Inc., Palo Alto, CA; Northrop Grumman Corp., Los Angeles, CA; Miltope Corporation, Hope Hull, AL; Raytheon Systems Company, Lexington, MA; Hamilton Software, Santa Rosa, CA; AverStar, Burlington, MA; Tern Technology, Inc., Hauppauge, NY; Transportation Technology Center, Inc., Pueblo, CO; TYX Corp., Reston, VA; TestMart, San Bruno, CA and Instant Knowledge, Charlottesville, VA are no longer parties to the venture. Additionally, Hughes Space & Communication Company, El Segundo, CA is now Boeing Satellites & Navigation Systems, Los Angeles, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TDC intends to file additional written notification disclosing all changes in membership.

On November 12, 1999, TDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2000 (65 FR 38579).

The last notification was filed with the Department on July 23, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 28, 2001 (66 FR 45339).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–28790 Filed 11–17–03; 8:45 am]

BILLING CODE 4410–11–M

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: Department of Justice, United States, Parole Commission.

TIME AND DATE: 9:30 a.m., Thursday, November 20, 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.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5590.

Dated: November 13, 2003.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 03–28861 Filed 11–14–03; 9:27 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 4, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Agency (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202)–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be 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 submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of a currently approved collection.

Title: The Voluntary Fiduciary Correction Program and Prohibited Transaction Class Exemption.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Reporting and Third party disclosure.

Number of Respondents: 150.

Number of Annual Responses: 880.

Total Burden Hours: 1,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $66,970.

Description: The Voluntary Fiduciary Correction (VFC) Program is an enforcement program intended to encourage the full correction of certain breaches of fiduciary responsibility and the restoration of losses resulting from those breaches to participants and

beneficiaries in employee benefit plans. For certain eligible breaches that have been corrected according to the terms and conditions of the VFC Program, the Department will issue a ''no action'' letter, thereby releasing the applicant from possible civil penalties under section 502(l) of ERISA. The VFC Program provides applicants with information both on identifying eligible transactions for correction and on the means for achieving fully acceptable corrections. The information collection consists of an application, description of the transaction and correction, and other appropriate supporting documentation.

The Exemption, used only in conjunction with the VFC Program, permits applicants to the VFC Program to make full correction of certain eligible transactions without incurring sanctions in the form of excise taxes imposed under sections 4975(a) and (b) of the Internal Revenue Code (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code. For those fiduciaries wishing to take advantage of the Exemption, the information collection for the VFC Program also includes notification to interested persons, generally participants and beneficiaries, that an application has been submitted under the VFC Program. A copy of the notice must also be furnished to a Regional Office of the Employee Benefits Security Administration.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–28766 Filed 11–17–03; 8:45 am]

BILLING CODE 4510–23–M

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 November 22, 2003 from 11 a.m. until 5 p.m. and continue on November 23, 2003, from 10 a.m. until conclusion of the Board's agenda.

LOCATION: November 22, 2003: The Association of the Bar of the City of New York, 42 West 44th Street, New York, NY 10036. November 23, 2003: The Royalton Hotel, 44 West 44th Street, New York, NY 10036.

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. 552(b)(2), (6), (7), (9)(b), and (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR section 1622.5(a), (e), (f), (g), and (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 September 15, 2003.
3. Approval of the minutes of the Executive Session of the Board's meeting of September 15, 2003.
4. Approval of the minutes of the Executive Session of the Board's meeting of November 4, 2003.
5. Approval of the minutes of the Search Committee for LSC President and Inspector General's meeting of October 28, 2003.
6. Approval of the minutes of the Search Committee for LSC President and Inspector General's meeting of November 10, 2003.
7. Remarks by Maria Imperial, Executive Director for the New York City Bar Fund, addressing the Association of the Bar of the City of New York's partnership with Legal Services for New York City (LSNY).
8. Chairman's Report.
9. Members' Reports.
10. Acting Inspector General's Report.
11. Consider and act on the report of the Board's Provision for the Delivery of Legal Services 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 Operations & Regulations Committee.
14. Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.
15. Consider and act on the Board of Directors' Semi-Annual Report to Congress for the period of April 1, 2003 through September 30, 2003.
16. Consider and act on possible changes to LSC's organizational chart and lines of reporting.
17. Consider and act on the postponement of the Board's 2004 Annual Meeting from Friday, January 30, 2004 to Saturday, January 31, 2004.
18. Consider and act on other business.
19. Public comment.
20. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

21. Report [1] on follow-up to personnel item acted on by the Board in executive session meeting held on November 4, 2003.
22. Briefing [2] by the Acting Inspector General on the activities of the Office of Inspector General.
23. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.
24. Consider and act on options available to compensate the LSC President.
25. Interviews of select candidates for the position of LSC President.
26. Review and discussion of interviewed candidates.
27. Consider and act on further steps to be taken in connection with the selection and retention of a finalist for the office of President.

Open Session

28. 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: November 13, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–28855 Filed 11–13–03; 4:55 pm]

BILLING CODE 7050–01–P

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 November 21, 2003. The meeting will begin at 5 p.m. and continue until the Committee concludes its agenda.

[1] Any portion of the closed session consisting solely of staff briefings and/or reports 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.

[2] See Footnote 1.

LOCATION: The Association of the Bar of the City of New York, 42 West 44th Street, New York, NY 10036.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 15, 2003.
3. Report on LSC's Consolidated Operating Budget (COB), Expenses, and Other Funds Available through September 30, 2003.
4. Consider and act on proposed Internal Budgetary Adjustments and COB reallocations.
5. Consider and act on other business.
6. Public comment.
7. 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: November 13, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–28856 Filed 11–13–03; 4:55 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 November 22, 2003. The meeting will begin at 10 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Association of the Bar of the City of New York, 42 West 44th Street, New York, NY 10036.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of September 14, 2003.
3. Consider and act on recommendation to make to the Board of Directors regarding adoption of proposed revisions to 45 CFR Part 1604, LSC's regulation on Outside Practice of Law.
4. Consider and act on whether to undertake any further rulemaking activities prior to appointment of a new President for LSC.
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 & 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: November 13, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–28857 Filed 11–13–03; 5:01 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 November 21, 2003. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Association of the Bar of the City of New York, 42 West 44th Street, New York, NY 10036.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of September 15, 2003.
3. Presentation by Randi Youells, LSC Vice President for Programs, on the history and impact of LSC's five-year State Planning Initiative.
4. Presentation by representatives of Legal Services for New York City (LSNY) on their recent efforts to restructure their operations.
5. Presentation by representative of the New York state justice community on state planning in New York.
6. Discussion of the future direction of the Committee.
7. Consider and act on other business.
8. Public comment.
9. 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: November 13, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–28858 Filed 11–13–03; 5:01 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–147)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, December 3, 2003, 8 a.m. to 4 p.m.; and Thursday, December 4, 2003, 8 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6H46, overflow room MIC–7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Proceedings of the NAC will be shown live via video feed in the overflow room, MIC–7H46. The agenda for the meeting is as follows:

—Development of NAC Work Plan
  —Information Technology
  —Strategic Plan
—Human Capital, Education & Communication
  —Informational Briefing on Return to Flight
  —Committee Reports

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before

receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Marla King via email at *marla.k.king@nasa.gov* or by telephone at (202) 358–1148. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–28797 Filed 11–17–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

Time and Dates for 2004: 12 noon, Eastern Time, January 15, March 4, May 6, July 8, September 2, November 4.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these conference calls will be open to the public. Those interested in participating in conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agenda: Rollcall, announcements, overview of accomplishments, planning, reports, new business, adjournment.

For Further Information Contact: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; (202) 272–2004 (voice), (202) 272–2074 (TTY), (202) 272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: November 12, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–28715 Filed 11–17–03; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meetings

TIME AND DATE: 10 a.m., Thursday, November 20, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Annual Performance Plan for 2004.
2. Advance Notice of Proposed Rulemaking: Interagency Proposal to Consider Alternative Forms of Privacy Notices.
3. NCUA's Operating Budget for 2004/2005.
4. NCUA's Overhead Transfer Rate.
5. NCUA's Operating Fee Scale for 2004.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 20, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under section 206 and 208 of the Federal Credit Union Act. Closed pursuant to Exemptions (5), (8), (A)(ii), and 9(B).
2. Administrative Action under part 708 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

Becky Baker,

Secretary of the Board.

[FR Doc. 03–28859 Filed 11–13–03; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 775, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 8, 2003, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 6, 2003 to Terry J. Wilson (2004–016).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–28798 Filed 11–17–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 8, 2003, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on November 10, 2003, to the following applicant: David Rootes, Antarctic Logistics & Expeditions; *Permit No.:* 2004 WM–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–28799 Filed 11–17–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414, 50–369 and 50–370]

Duke Energy Corporation, et al., Catawba Nuclear Station, Units 1 and 2, McGuire Nuclear Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station (McGuire), Units 1 and 2, located in Mecklenburg County, North Carolina and to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, et al, (the licensee), for operation of the Catawba Nuclear Station (CNS), Units 1 and 2, located in York County, South Carolina.

The proposed amendments, requested by the licensee in a letter dated March 24, 2003, as supplemented by letters dated June 25, 2003, and October 15, 2003, would revise the Technical Specifications (TSs) to relocate reactor coolant system cycle specific parameter limits from the TS to the core operating limits reports for the Catawba and the McGuire Nuclear Stations. The proposed amendments would also revise the required minimum measured reactor coolant system flow rate from 390,000 gallons per minute (gpm) to 388,000 gpm for McGuire, Units 1 and 2 and Catawba, Unit 1. Associated changes have also been proposed for the TS Bases section.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

As required by 10 CFR 50.91(a)(1), this analysis is provided to demonstrate that the proposed license amendment does not involve a significant hazard.

Conformance of the proposed amendment to the standards for a determination of no significant hazards, as defined in 10 CFR 50.92, is shown in the following:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The reduction in McGuire Units 1 and 2, and Catawba Unit 1 [reactor coolant system] RCS minimum measured flow (MMF) from 390,000 gpm [gallons per minute] to 388,000 gpm will not change the probability of actuation of any Engineering Safeguard Feature or any other device. The consequences of previously analyzed accidents have been found to be insignificantly different when this reduced flow rate is assumed. The system transient response is not affected by the initial RCS flow assumption unless the initial assumption is so low as to impair the steady-state core cooling capability or the steam generator heat transfer capability. This is clearly not the case with a 0.5% reduction in RCS flow.

The relocation of Reactor Coolant System (RCS) related cycle-specific parameter limits from the Technical Specifications (TS) to the Core Operating Limits Reports (COLR) proposed by this amendment request does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The proposed change will not result in the modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR. Therefore, the proposed amendment does not result in the increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the facility which should introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators.

(3) Does the proposed change involve a significant reduction in margin of safety?

No. Implementation of this amendment would not involve a significant reduction in the margin of safety. The decrease in McGuire Units 1 and 2, and Catawba Unit 1 RCS MMF has been analyzed and found to have an insignificant effect on the applicable transient analyses found in the UFSAR. Previously approved methodologies will continue to be used in the determination of cycle-specific core operating limits appearing in the COLRs. Additionally, the RCS minimum total flow rates for McGuire and Catawba are retained in their respective TS so as to assure that lower flow rates will not be used without prior NRC approval. Consequently, no safety margins will be impacted.

Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or

copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 18, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lisa F. Vaughn, Legal Department (ECIIX), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 24, 2003, as supplemented by letters dated June 25, 2003, and October 15, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in

ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of November, 2003.

For the Nuclear Regulatory Commission.

Robert E. Martin, Sr.

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28751 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–81, issued to Southern Nuclear Operating Company, *et al.* (SNC, the licensee), for operation of the Vogtle Electric Generating Plant, Unit 2, located in Burke County, Georgia.

The proposed amendment would extend the surveillance interval for the Memories Test portion of the ACTUATION LOGIC TEST for: (1) Power Range Block (Switch position 1), (2) Intermediate Range Block (Switch position 2), (3) Source Range Block (Switch positions 3 and 4), (3) Safety Injection (SI) Block, Pressurizer (Switch positions 5 and 6), (4) SI Block, High Steam Pressure Rate (Switch positions 7 and 8), (5) Auto SI Block (Switch position 9), and (6) Feedwater Isolation on P14 or SI (Switch positions 10 and 11). In addition to the functions listed above, the licensee is requesting an extension of the surveillance interval for the portions of the ACTUATION LOGIC TEST for Feedwater Isolation on P14 or SI that pass through the memories circuits and the Power Range block of the Source Range Trip test for the Unit 2 Train B Solid State Protection System to the next refueling outage at the end of Cycle 10 or the next Unit 2 shutdown to MODE 5, whichever comes first.

Because the above-described surveillances will become due multiple times before the end of the current fuel cycle, and the Memories Test Switch is not functioning, the licensee is requesting an exigent Technical Specification change in accordance with 10 CFR 50.91(a)(6) to extend the surveillance interval of the above-described tests. SNC is requesting that the surveillance interval be extended to the end of the current cycle (Cycle 10) or the next Unit 2 shutdown to MODE 5, whichever comes first.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not physically alter any plant structures, systems or components. The SSPS [Solid State Protection System] at VEGP [Votgle Electric Generating Plant] has a history of high reliability. In addition, similar changes to the surveillance interval for actuation logic testing for Westinghouse SSPS actuation logic has been approved by the NRC with their approval of WCAP–15376 and Technical Specification Task Force (TSTF) 411. Therefore[,] there will not be a significant increase in the probability of an accident previously evaluated. There will not be a significant increase in the consequences of any accident previously evaluated as a result of this Technical Specification amendment because the incremental condition large early release probability is very small in accordance with the criteria of Regulatory Guide 1.177. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves an extension of a previously determined acceptable surveillance interval. The proposed change does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. In addition, compensatory actions will be in place which will offset the very small increase in risk. Therefore, the requested Technical Specification amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

The extended surveillance interval for the SSPS ACTUATION LOGIC TEST has been shown to have a very small impact on plant risk using the criteria of Regulatory Guides 1.174 and 1.177. In addition, compensatory actions in place will be in place in the case of a failure of the functions listed above. Therefore, the enforcement discretion does not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30

a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 2, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, Public File Area O1F21,11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 4, 2003. The NRC staff has granted on November 4, 2003, and issued in writing on November 6, 2003, a Notice of Enforcement Discretion which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who

do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of November, 2003.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28750 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 AND 50–499]

STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its June 28, 2001, application for proposed amendments to Facility Operating Licenses No. NPF–76 and No. NPF–80 for the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 28, 2001, (66 FR 49710). However, by letter dated July 28, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated June 28, 2001, the licensee's letter dated May 21, 2002 requesting that the NRC suspend its review of the June 28, 2001 application, and the licensee's letter dated July 28, 2003, which withdrew the June 28, 2001 application for the license amendments. Documents may be examined and/or copied for a fee, at the NRC's Public Document Room (PDR) located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encountered problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of November 2003.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28752 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Environmental Assessment and Finding of No Significant Impact Related to Maine Yankee Atomic Power Company's Request for Exemption From the Recordkeeping Requirements of 10 CFR 50.59(D)(3); 10 CFR Part 50, Appendix A; 10 CFR Part 50, Appendix B

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering granting an exemption from the Recordkeeping requirements of Title 10 of the Code of Federal Regulations (10 CFR) 50.59(d)(3); 10 CFR Part 50, Appendix A; 10 CFR Part 50, Appendix B, for the Maine Yankee Plant as requested by Maine Yankee Atomic Power Company (MY) on July 14, 2003. An environmental assessment (EA) was performed by the NRC staff in support of its review of the exemption request.

II. Environmental Assessment

Introduction

MY is the licensee and holder of Facility Operating License No. DPR–36 for the Maine Yankee Plant, a permanently shut down decommissioning nuclear plant. On August 7, 1997, MY notified NRC that operations had permanently ceased and that fuel had been permanently removed from the reactor. MY submitted its final revised License Termination Plan (LTP) in October 2002, which the NRC approved on February 28, 2003. Decommissioning of the MY facility is approximately 80% complete. The nuclear reactor and all associated systems and components necessary for the safe generation of power have been removed from the facility and disposed of or sold off-site. In addition, the structures necessary for safe power generation are either demolished or in an advanced state of demolition. Safety-related structures, systems and components (SSCs) remaining total less than five, all associated with the spent fuel pool. Removal of fuel from the pool is approximately half complete with all fuel scheduled to be removed in early 2004.

Purpose and Need for Proposed Action

The requested exemption and application of the exemption will eliminate an unwarranted financial burden on ratepayers associated with the storage of a large volume of hardcopy records.

The Proposed Action

The proposed action would allow the disposal of records, prior to termination of MY License No. DPR–36, when: (1) The nuclear power unit and associated support systems no longer exist for SSCs associated with safe power generation; or (2) spent nuclear fuel has been completely transferred from the spent fuel pool for SSCs associated with the safe storage of fuel in the spent fuel pool.

MY is not requesting any exemption associated with recordkeeping requirements for storage of spent fuel at its independent spent fuel storage installation under 10 CFR 50 or the general license requirements of 10 CFR 72.

Alternatives to Proposed Action

No action. Under this alternative MY would continue to store the records in question until license termination.

The Affected Environment and Environmental Impacts

None. The proposed action is purely administrative in nature and will have no effect on the environment.

Agencies and Persons Contacted

None.

Conclusions

NRC has determined that the proposed action will have no significant effect on the quality of the human environment.

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted, and a Finding of No Significant Impact is appropriate.

IV. Further Information

The licensee's request for the proposed action (ADAMS Accession No: ML032040178) and other related

documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Any questions with respect to this action should be referred to John Buckley, Decommissioning Branch, Mailstop T–7F27, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 5th day of November, 2003.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28748 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact Regarding a Request for Exemption From the Recordkeeping Requirements of 10 CFR Part 50 Appendix A Criterion 1, 10 CFR Part 50 Appendix B Section XVII and, 10 CFR Part 50 Section 50.59(d)(3), for the Maine Yankee Nuclear Plant

ACTION: Notice of Availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) regarding a request for exemption from the recordkeeping requirements of 10 CFR Part 50 Appendix A criterion 1, 10 CFR Part 50 Appendix B Section XVII, and 10 CFR Part 50 Section 50.59(d)(3) for the Maine Yankee Nuclear Plant.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a exemption from the recordkeeping requirements of 10 CFR Part 50 Appendix A criterion 1, 10 CFR Part 50 Appendix B Section XVII, and 10 CFR Part 50 Section 50.59(d)(3), for the Maine Yankee Nuclear Plant, Wiscasset, ME. In a letter dated July 14, 2003, Maine Yankee Atomic Power Company (MY) requested an exemption which will allow the disposal of records when: (1) The nuclear power unit and its associated support systems no longer exist for structures, systems and components (SSCs) associated with safe power generation; or (2) spent nuclear fuel has been completely transferred from the spent fuel pool for SSCs associated with the safe storage of fuel in the spent fuel pool. MY is not requesting any exemption associated with recordkeeping requirements for storage of spent fuel in its independent spent fuel storage installation (ISFSI) under 10 CFR Part 50 or the general license requirements of 10 CFR Part 72.

The NRC staff has prepared an EA in support of this action in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a FONSI for the proposed action.

II. Environmental Assessment Summary

The proposed action would allow the licensee to dispose of records, prior to termination of License No. DPR–36, that: (1) Are associated with the SSCs for the nuclear power generation unit; and (2) are associated with the spent fuel pool SSCs.

The NRC has evaluated the licensee's requested exemption and concluded that it is administrative in nature. Additionally, there are no radiological environmental impacts associated with the proposed action; nor, are there any nonradiological environmental impacts associated with the proposed action.

III. Finding of No Significant Impact

NRC has prepared an EA in support of the licensee's application for an exemption request. On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and documents related to this action are available for inspection at NRC's Public Electronic reading Room at; *http://www.nrc.gov/NRC/ADAMS/index.html.* The ADAMS Accession No. for the licensee's exemption request is ML032040178. The ADAMS Accession No. for the staff's EA is ML033100451. Documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852. Any actions with respect to this action should be referred to John T. Buckley, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Telephone (301) 415–6607.

Dated at Rockville, Maryland, this 5th day of November, 2003.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28749 Filed 11–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of November 17, 24, December 1, 8, 15, 22, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 17, 2003

Thursday, November 20, 2003

12:45 p.m.—Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of November 24, 2003—Tentative

There are no meetings scheduled for the Week of November 24, 2003.

Week of December 1, 2003—Tentative

There are no meetings scheduled for the Week of December 1, 2003.

Week of December 8, 2003—Tentative

Tuesday, December 9, 2003

1:30 p.m.—Briefing on Equal Employment Opportunity Program, (Public Meeting) (Contact: Corenthis Kelley, (301) 415–7380).

Wednesday, December 10, 2003

9:30 a.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of December 15, 2003—Tentative

There are no meetings scheduled for the Week of December 15, 2003.

Week of December 22, 2003—Tentative

There are no meetings scheduled for the Week of December 22, 2003.

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: R. Michelle Schroll, (301) 415–1662.

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on November 13, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules ''Affirmation of (1) Final Rule Revising 10 CFR part 2—Rules of Practice; (2) Sequoyah Fuels Corp. (Gore, Oklahoma Site); Answer to Presiding Officer's Certified Question Regarding Classification of Waste as AEA § 11e(2) Byproduct Material; and (3) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI'' be held on November 13, and on less than one week's notice to the public.

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: November 13, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–28883 Filed 11–14–03; 11:53 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48752; File No. SR–MSRB–2003–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

November 6, 2003.

On October 30, 2003, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2003–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretive guidance concerning rule G–37, on political contributions and prohibitions on municipal securities business. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change consisting of technical revisions to previously adopted interpretations of rule G–37 (hereafter referred to as ''the proposed rule change''). The text of the proposed rule change below. Additions are italicized; deletions are bracketed.

* * * * *

Rule G–37 Qs & As

I. Persons/Entities Subject to the Rule

I.1

Q: To whom does [r]*R*ule G–37 apply?

A: In general, [r]*R*ule G–37 applies to brokers, dealers and municipal securities dealers (collectively referred to as dealers), municipal finance professionals, and PACs controlled by the dealer or any municipal finance professional. In addition, the recordkeeping and disclosure provisions apply to *non-MFP* executive officers of the dealer.

(May 24, 1994)

II. Prohibition on Engaging in Municpal Securities Business (Rule G–37(b))

II.1

Q: What actions would cause a dealer to be prohibited from engaging in municipal securities business with an issuer?

A: Rule G–37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer, (ii) any municipal finance professional associated with such dealer; or (iii) any PAC controlled by the dealer or any municipal finance professional.

(May 24, 1994)

II.2

Q: Is there an exception to this prohibition on engaging in municipal securities business?

A: There is one exception to [r]*R*ule G–37(b). The prohibition does not apply if the only contributions to officials of issuers are made by municipal finance professionals entitled to vote for such officials, and provided such contributions, in total, are not in excess of $250 by each such municipal finance professional to each official of such issuer, per election.

(May 24, 1994)

II.3

Q: What is the municipal securities business that a dealer would be banned from engaging in with an issuer if certain political contributions are made to officials of such issuers?

A: The term ''municipal securities business'' is defined in [r]*R*ule G–37(g)(vii) to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors and consultants, placement agents, and negotiated remarketing agents. The rule does not prohibit a dealer from engaging in competitive underwritings or competitive remarketing services for the issuer.

(May 24, 1994)

II.4

Q: If a[n] *non-MFP* executive officer makes a contribution to an official of an issuer, is the dealer prohibited from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

engaging in municipal securities business with that issuer?

A: No. The prohibition section applies only to contributions made by the dealer, its municipal finance professionals, or any PAC controlled by the dealer or any of its municipal finance professionals. The definition of *non-MFP* executive officer does not include any municipal finance professional. However, contributions by *non-MFP* executive officers are subject to the reporting/disclosure provisions of the rule. In addition, pursuant to section (d), dealers are prohibited from using *non-MFP* executive officers (as well as any other person or entity) as a conduit for making contributions to officials of issuers.

(May 24, 1994)

II.5

Q: Would a dealer be prohibited from engaging in municipal securities business with a state agency, whose board members are appointed by the governor, if the dealer makes contributions to the governor?

A: *Yes, the definition of ''official of an issuer'' in Rule G–37(g)(vi) includes any person who was, at the time of the contribution, an incumbent, candidate or successful candidate for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.* [The Board intended to prohibit a dealer from engaging in municipal securities business with this state agency in these circumstances. The Board recently filed with the SEC an amendment to rule G–37 to clarify the definition of ''official of an issuer.'' See the rule filing, SR–MSRB–94–5, for more information about this amendment.]

(May 24, 1994)

II.6

Q: May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

A: Yes, under certain conditions. The *de minimis* exception allows a municipal finance professional to contribute up to $250 per candidate per election if the municipal finance professional is entitled to vote for that issuer official. The *de minimis* exception is keyed to an election cycle; therefore, if a municipal finance professional contributed $250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

(September 9, 1997)

II.7

Q: Are any payments made to issuer officials, other than political contributions, covered by the rule?

A: No. However, any other payments may be subject to [r]*R*ule G–20 on gifts and gratuities.

(May 24, 1994)

Primary, State Caucus or Convention

II.8

Q: If an issuer official is involved in a primary election prior to the general election, may a municipal finance professional who is entitled to vote for such official contribute $250 to the issuer official's primary as well as general election?

A: Yes, the municipal finance professional could contribute up to $500 to each such official (*i.e.*, $250 per election).

(May 24, 1994)

II.9

Q: If the locality in which the incumbent or candidate is seeking election as an issuer official holds a convention or caucus (instead of a primary election) prior to the general election, may a municipal finance professional entitled to vote in that locality contribute $250 to the incumbent or candidate's convention or caucus election campaign, as well as $250 to the incumbent or candidate's general election, without causing a ban on municipal securities business with the issuer?

A: Yes, if the issuer official has been qualified to be considered at the state caucus or convention.

(June 15, 1995)

MFP as Incumbent or Candidate

II.10

Q: If a municipal finance professional also is an incumbent or candidate for political office in a municipality in which the municipal finance professional's employer (*i.e.*, the dealer) conducts municipal securities business, must the dealer terminate the municipal finance professional or are there any restrictions on the kind of business a dealer can engage in with that issuer?

A: No. However, the dealer, any municipal finance professional and any PAC controlled by the dealer or municipal finance professional must ensure that the dealer does not engage in municipal securities business with the issuer if contributions (other than the *de minimis* contributions allowed under section (b)) are made to an official of the issuer. The municipal finance professional who is an incumbent or candidate for office is not limited to contributing the *de minimis* amount to his or her own campaign in such instances.

(May 24, 1994)

Attendance at Fund-Raising Dinner

II.11

Q: May a dealer continue to engage in municipal securities business with an issuer if a municipal finance professional pays for and attends a fund-raising dinner for a candidate who is seeking election to a position as an official of such issuer?

A: A municipal finance professional who contributes funds in this instance would subject the dealer to a prohibition on municipal securities business with the issuer unless the municipal finance professional is entitled to vote for such candidate and any contributions do not exceed $250 to such candidate per election. In addition, any municipal finance professional who attends the dinner for the purpose of soliciting contributions by others for the issuer official would violate [r]*R*ule G–37's prohibition on soliciting contributions. *See also Rule G–37(c).*

(May 24, 1994)

Two-Year Look Back

II.12

Q: A municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*) was associated with dealer X at the time he made a contribution which resulted in the dealer being prohibited from engaging in municipal securities business with the issuer. Then, less than two years after making the contribution, the municipal finance professional becomes associated with dealer Y. Is dealer Y also subject to the prohibition on business?

A: Both dealers are subject to the prohibition for two years from the date

the municipal finance professional made the contribution. Of course, dealer Y's prohibition on business only begins when the municipal finance professional becomes associated with that dealer.
(May 24, 1994)

II.13

Q: Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G–37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years.
(May 24, 1994)

II.14

Q: If a dealer hires an individual as a retail sales person, would the contributions made by that person prior to being hired subject the dealer to the two-year prohibition on municipal securities business?

A: The rule's two-year prohibition is triggered by contributions by dealers, municipal finance professionals, and political action committees controlled by a dealer or a municipal finance professional. If a retail sales person is not a municipal finance professional and does not become a municipal finance professional within two years after making a contribution to an issuer official, then such contributions will not trigger the ban on business. However, if the retail sales person is, or within two years becomes, a municipal finance professional (*e.g., by solicitation of officials of an issuer*), then contributions made by that person will subject the hiring dealer to the two-year ban on business. [For additional guidance in this area, please refer to Q's & A's numbered 14 through 16 published in the June 1994 issue of *MSRB Reports.*] *A retail sales person would not be considered to be a municipal finance professional solely because of his or her municipal securities retail sales activities. (See Rule G–37(g)(iv)).*
(December 7, 1994)

II.15

Q: A person is associated with a dealer in a non-municipal finance professional capacity, and makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e., a municipal investment banker subject to the two year look back*). Would the dealer be prohibited from engaging in a negotiated underwriting with that issuer?

A: Yes, the dealer is subject to the prohibition for two years from the date the contribution was made.
(May 24, 1994)

II.16

Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G–37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer. The Board notes, however, that [r]*R*ule G–37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G–37. *Thus, the dealer may wish to seek an exemption from the ban on business pursuant to Rule G–37(i) from its appropriate regulatory authority.*
(June 29, 1998)

Refund of Inadvertent Contribution

II.17

Q: A disgruntled municipal finance professional made a contribution purposely to subject the dealer to the two-year prohibition on business. When the contribution is discovered by the dealer, a refund of the contribution is requested and obtained. Is the dealer still banned from engaging in business with that issuer? In addition, does the contribution have to be disclosed on Form G–37?

A: Rule G–37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer by any municipal finance professional associated with such dealer if the contribution does not meet the *de minimis* exemption. Section (i) of the rule provides a procedure whereby dealers may seek relief from the appropriate enforcement agency of the rule G–37 prohibition on business [, in limited circumstances]. In determining whether to grant such an exemption, one of the factors the enforcement agency will consider is whether the dealer has taken all available steps to obtain a return of the contribution. Even if a refund of the contribution has been obtained, dealers are required to seek an exemption from the ban on business. In addition, dealers also must disclose the contribution on Form G–37. Dealers may wish to indicate on the form (and in their own records) that a refund of the contribution was obtained. *See Rule G–37(i).*

(August 18, 1994)

Volunteer Work

II.18

Q: Is a municipal finance professional prohibited from performing volunteer work on an issuer official's behalf?

A: Rule G–37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work. However, soliciting and bundling of contributions would invoke application of the rule. In addition, if the municipal finance professional uses the dealer's resources (*e.g.*, a political position paper prepared by dealer personnel) or incurs expenses in the conduct of such volunteer work (*e.g.*, hosting a reception), then the value of such resources or expenses would constitute a contribution. Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g.*, cab fares and personal meals), would not constitute a contribution.

(May 24, 1994)

Dealer Resources

II.19

Q: If an employee of a dealer is donating his or her time to an issuer official's campaign, does the dealer have to disclose this as a contribution to such official? In addition, would the fact that the employee is taking a leave of absence from the dealer cause a different result?

A: An employee of a dealer generally can donate his or her time to an issuer official's campaign without this being viewed as a contribution by the dealer to the official, as long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (*e.g.*, an unpaid leave of absence).

(August 18, 1994)

Making Contributions to Issuer Officials on Behalf of Other Persons

II.20

Q: A municipal finance professional signs a check drawn on a joint account, which is owned by the municipal finance professional and another person, and submits it to an issuer official as a contribution along with a writing which states that the contribution is being made solely by the other holder of the joint account. Would any portion of this contribution be attributable to the municipal finance professional under [r]*R*ule G–37?

A: If a municipal finance professional signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, then the municipal finance professional is deemed to have made the full contribution, regardless of any writing accompanying the check that provides or directs otherwise. Moreover, if this amount exceeds, or does not qualify for, the *de minimis* exception, then by making such a contribution the municipal finance professional will trigger the rule's ban on business thereby prohibiting his dealer/employer from engaging in municipal securities business with the particular issuer for two years.

(February 16, 1996)

II.21

Q: If a municipal finance professional and another person (*e.g.*, her spouse) both sign a check drawn on their joint account and submit the check to an issuer official as a contribution, would the contribution amount be attributable equally between them (*i.e.*, 50% to each person) for purposes of [r]*R*ule G–37?

A: Yes. If a municipal finance professional and any other person both sign a check drawn on their joint account and submit it to an issuer official as a contribution, then each person is deemed to have made half of the contribution, regardless of any writing accompanying the check that provides or directs otherwise.

(February 16, 1996)

Making Contributions to a Candidate Who Later Loses the Election

II.22

Q: If a municipal finance professional made a political contribution which was not subject to the *de minimis* exception to an issuer official candidate who subsequently did not win the election, is the dealer banned from engaging in municipal securities business with that issuer (*i.e.*, the governmental entity)?

A: Yes. Rule G–37 defines the term ''official of such issuer'' or ''official of an issuer'' as ''any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in subparagraph (A), above.'' It is clear from the rule that, at the time the contribution is made, if the recipient of that contribution is an ''official of an issuer,'' then the dealer is subject to the two-year ban on business with the issuer, regardless of whether the candidate wins or loses the election. Any other result would mean that municipal finance professionals could make contributions to issuer officials, but the ban on business would not be triggered (if at all) until election results were known.

(February 16, 1996)

III. INDIRECT CONTRIBUTIONS (Rule G–37(d))

Contributions by Spouses and Household Members

III.1

Q: Are contributions to issuer officials by municipal finance professionals' spouses and household members covered by the rule?

A: No, unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.

(May 24, 1994)

III.2

Q: If a municipal finance professional directs a retail sales person (who is not a municipal finance professional) to make a political contribution to an issuer official, would this trigger the rule's two-year prohibition on business with that issuer?

A: Yes. Section (d) of the rule prohibits municipal finance professionals (and dealers) from using any person or means to do, directly or indirectly, any act which would violate the rule. In other words, a municipal finance professional is prohibited from using a sales person (or any other person not otherwise subject to the rule) as a conduit to circumvent the rule. Thus, contributions made, directly or indirectly, by a municipal finance professional (or a dealer) to an issuer official will subject the dealer to the rule's two-year prohibition on municipal securities business with that issuer. In addition to triggering the prohibition, the municipal finance professional in this case has violated section (d) of the rule.

(December 7, 1994)

Political Parties

III.3

Q: Are contributions to national, state or local political parties covered by the rule?

A: Any such contributions would not trigger the prohibition on business portion of the rule (section (b)) unless such entities are used as a conduit to indirectly contribute to an issuer official, which is prohibited by section (d) of the rule. However, contributions to state or local political parties must be recorded under [r]*R*ule G–8(a)(xvi) and disclosed in summary form under [r]*R*ule G–37(e), except for those contributions which meet the *de minimis* exemption. *See also Rule G–37(e).*

(May 24, 1994)

Contributions to a Non-Dealer Associated PAC and Payments to a State or Local Political Party

III.4

Q: Could contributions to a non-dealer associated PAC or payments to a state or local political party lead to a ban on municipal securities business with an issuer under [r]*R*ule G–37?

A: Rule G–37(d) prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or municipal finance professional. A

dealer would violate [r]*R*ule G–37 by doing business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on business. For example, in certain instances, a non-dealer associated PAC or a local political party may be soliciting funds for the purpose of supporting a limited number of issuer officials. Depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

[Q: Does rule G–37 address contributions to non-dealer associated or ''special interest'' PACs?]

[A: Rule G–37 does not deal directly with contributions to non-dealer associated or ''special interest'' PACs. Unless the non-dealer associated or ''special interest'' PAC solicits contributions for the purpose of supporting an issuer official, contributions to these PACs should not result in a ban on business under section (b) of rule G–37.

(August 18, 1994)]

III.5

Q: If a dealer receives a fund raising solicitation from a non-dealer associated PAC or a political party with no indication of how the collected funds will be used, can the dealer make contributions to the non-dealer associated PAC or payments to the political party without causing a ban on municipal securities business?

A: Dealers should inquire of the non-dealer associated PAC or political party how any funds received from the dealer would be used. For example, if the non-dealer associated PAC or political party is soliciting funds for the purpose of supporting a limited number of issuer officials, then, depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

Making Payments to a National Political Party for Its Non-Federal Account (Rule G–37(e))

III.6

Q: If a national political party accepts payments in which contributors have designated that their payments be deposited into the account for a state or local political party, must the dealer record such payments and report them on Form G–37?

A: Yes. Rule G–37 requires that dealers record and report payments made to state and local political parties and the ultimate recipient in the above scenario is a state or local political party so designated by the contributor.

(February 16, 1996)

IV. DEFINITIONS (Rule G–37(g))

Contribution

IV.1

Q: How is the term ''contribution'' defined in [r]*R*ule G–37?

A: The term ''contribution'' is defined in [r]*R*ule G–37(g)(i) to mean any gift, subscription, loan, advance, or deposit of money or anything of value made: (i) for the purpose of influencing any election for federal, state or local office; (ii) for payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office.

(May 24, 1994)

IV.2

Q: Is [r]*Rule* G–37 applicable to contributions given to officials of issuers who are seeking election to federal office, such as the House of Representatives, the Senate or the Presidency?

A: Yes. Rule G–37(g)(i) defines ''contribution'' as, among other things, any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for federal, state or local office.

(June 15, 1995)

IV.3

Q: Does [r]*R*ule G–37 encompass all contributions to candidates for federal office?

A: No. Rule G–37 encompasses, for federal offices, only those contributions to an official of an issuer who is seeking election to a federal office.

(May 24, 1994)

IV.4

Q: Are contributions to bond election committees supporting ballot measures for bonds and tax levies subject to the requirements of [r]*R*ule G–37?

A: No.

(May 24, 1994)

Charitable Donations

IV.5

Q: Would a charitable donation to an organization made by a dealer at the request of an issuer official meet the definition of ''contribution'' in [r]*R*ule G–37?

A: No. Charitable donations are not considered political contributions for purposes of [r]*R*ule G–37 and therefore are not covered by the rule.

(May 24, 1994)

Municipal Finance Professional

IV.6

Q: Who is considered a municipal finance professional?

A: To determine if a particular person is a municipal finance professional, first determine whether the person is an ''associated person'' of a dealer (other than a bank dealer) under Section 3(a)(18) of the Securities Exchange Act of 1934 (Act), or an associated person of a bank dealer under Section 3(a)(32) of the Act. Then determine whether the associated person fits within one of the four categories listed in the definition of municipal finance professional under [r]*R*ule G–37.

Under Section 3(a)(18) of the Act, ''associated person of a broker or dealer'' is defined as:

- Any partner, officer, director, or branch manager (or any person occupying a similar status or performing similar functions);
- Any person directly or indirectly controlling, controlled by, or under common control with the dealer;
- Or any employee of such broker or dealer, except those whose functions are solely clerical or ministerial.

Under Section 3(a)(32) of the Act, ''person associated with a municipal securities dealer'' when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means:

- Any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities; and
- Any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

Under [r]*R*ule G–37(g)(iv), a municipal finance professional is defined as:

1. Any associated person primarily engaged in municipal representative activities pursuant to [r]*R*ule G–3(a)(i) (such activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph),

provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of Rule G–37(g)(iv);

2. Any associated person who solicits ''municipal securities business'' as defined in [r]*R*ule G–37 (which includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services);

3. Any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in paragraphs 1 or 2 above;

[3.] *4. Any associated person who is a* [Direct] supervisor[s] of the associated persons described *in paragraph 3* above, *up through* and including: [(1)] *(i)* for dealers that are not bank dealers, the CEO or similarly situated official; and [(2)] *(ii)* for bank dealers, the officer or officers designated by the bank's board of directors as responsible for the day-to-day conduct of the bank's dealer activities.

[4.] *5.* For dealers other than bank dealers: any *associated person who is a* member of the executive or management committee, or similarly situated officials, if any. For bank dealers: any member of the executive or management committee of the separately identifiable department or division of the bank, as defined in [r]*R*ule G–1, if any. *However, if the only associated persons meeting the definition of municipal finance professional are those described in this paragraph 5, the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.*

Each person listed by the dealer as a municipal finance professional is deemed to be such for purposes of [r]*R*ule G–37. [Remember that the prohibition on business applies to contributions made within the previous two years, beginning with contributions made on April 25, 1994.]

(May 24, 1994)

IV.7

Q: Does the definition of municipal finance professional include all registered representatives?

A: No. The definition of municipal finance professional includes, among others, any associated person primarily engaged in municipal representative activities pursuant to [r]*R*ule G–3(a)(i), *but excludes sales activities with natural persons.* [These activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph.]

(May 24, 1994)

IV.8

Q: Does the definition of municipal finance professional include any associated person who solicits municipal securities business, even if this solicitation activity is a very small portion of the associated person's work?

A: Yes. Even if an associated person is not ''primarily engaged in municipal representative activities,'' that associated person can be considered a municipal finance professional if he or she solicits municipal securities business, as defined in [r]*R*ule G–37 (such business includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services).

(May 24, 1994)

IV.9

Q: Does the definition of municipal finance professional include anyone other than an associated person of the dealer, for example, consultants, lawyers or spouses of municipal finance professionals?

A: No. Municipal finance professionals must be associated persons of the dealer. Of course, if a dealer or a municipal finance professional seeks indirectly to make contributions to issuer officials through consultants, lawyers or spouses, such contributions would result in the dealer being prohibited from engaging in municipal securities business with the issuer for two years from the date of such contributions.

(May 24, 1994)

Solicitation

[Q: Many retail sales persons in larger firms may not be ''primarily engaged in'' municipal securities representative activities and thus may not fall within that portion of the definition of municipal finance professional. However, if these sales persons solicit municipal securities business, would they be subject to rule G–37?]

[A: Yes. Rule G–37(g)(iv) defines a municipal finance professional to include, among others, any associated person who solicits municipal securities business. If a retail sales person solicits municipal securities business, then that person becomes a municipal finance professional. Any contributions by such persons made to an issuer official may subject the dealer to the two-year prohibition on business with that issuer.

(December 7, 1994)]

IV.10

Q: What constitutes ''solicitation'' of municipal securities business?

A: Solicitation activities may include, but are not limited to, responding to issuer Requests for Proposals, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so.

(December 7, 1994)

IV.11

Q: Has a ''solicitation'' occurred if a retail sales person receives a ''finder's fee'' for bringing municipal securities business to the dealer?

A: If a retail sales person receives a ''finder's fee'' for bringing municipal securities business to the dealer, then there should be a presumption that the sales person solicited municipal business from an issuer official. In such situations, the sales person becomes a municipal finance professional and any contributions made by that person to an issuer official may subject the dealer to the two-year prohibition on business with that issuer.

(December 7, 1994)

IV.12

Q: Is a ''finder's fee'' solely cash compensation?

A: No. Such compensation, for example, may take the form of: (i) an unusually large allocation of bonds to a particular sales person; (ii) sales credits; or (iii) any other kind of remuneration.

(December 7, 1994)

IV.13

Q: Any associated person who solicits municipal securities business is deemed a municipal finance professional under [r]*R*ule G–37. The Board previously noted that ''solicitation'' may encompass a number of activities, including, for example, making presentations of public finance and/or municipal securities marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so [(*MSRB Reports,* Vol. 14, No. 5 (Dec. 1994) at 8)]. If an associated person of a dealer attends a presentation by dealer personnel of public finance capabilities, would this also constitute ''solicitation'' under [r]Rule G–37?

A: Yes. If an associated person of a dealer attends such a presentation, then

he or she is assumed to have solicited municipal securities business and therefore is deemed a municipal finance professional under [r]*R*ule G–37. Accordingly, any contributions given to issuer officials by that person within the last two years could subject the dealer to the rule's two-year prohibition on business with such issuers. [For additional guidance in this area, please refer to Q&A number 4 in the June 1994 issue of *MSRB Reports* (Vol. 14, No. 3), CCH Manual paragraph 3681; and Q&A numbers 1, 2 and 3 in the December 1994 issue of *MSRB Reports* (Vol. 14, No. 5), CCH Manual paragraph 3681.]

(March 22, 1995)

Supervisors

IV.14

Q: A sales representative at a branch office solicits municipal securities business for the dealer. Such activity results in that person becoming a ''municipal finance professional'' under [r]Rule G–37(g)(iv)(B). Would that person's branch manager also be considered a municipal finance professional?

A: Yes. Rule G–37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (*i.e.*, the branch manager) also is included within the definition of municipal finance professional. [Prior to the most recent revision to this portion of the definition of municipal finance professional (which was approved on March 6, 1995 in Securities Exchange Act Release No. 34–35446), the definition included any ''direct supervisor'' of any associated person who solicited municipal securities business (or who was primarily engaged in municipal securities representative activities). Under both definitions, [b]*B*ranch managers are included within the definition of municipal finance professional in the circumstances described above. [For additional information in this area, please refer to *MSRB Reports,* Vol. 14, No. 4 (August 1994) at 28–29, CCH Manual paragraph 3681.]

(March 22, 1995)

Designation Period for Municipal Finance Professionals

IV.15

Q: Rule G–37(g)(iv) states that each person designated a municipal finance professional shall retain this designation for [two] *one* year[s] after the last activity or position which gave rise to the designation. If a dealer terminates a municipal finance professional's employment, and that person is no longer associated in any way with the dealer (including any affiliated entities of the dealer), must the dealer continue to designate that person a ''municipal finance professional'' for recordkeeping and reporting purposes under [r]*R*ules G–37(g)(iv) and G–8(a)(xvi)?

A: No. If a municipal finance professional is no longer employed by the dealer, and is not an ''associated person'' of the dealer, then the dealer is not required to designate that person a municipal finance professional and the dealer may cease its recordkeeping and reporting obligations with respect to that person.

(August 6, 1996)

IV.16

Q: If a municipal finance professional is transferred from a firm's dealer department to another non-municipal department, such as the corporate department, must the dealer continue to designate this person a municipal finance professional for recordkeeping and reporting purposes?

A: If a municipal finance professional is transferred to another department within the same firm (such as corporate, equities, etc.) and remains an ''associated person'' of the dealer, the dealer must continue to designate this person a municipal finance professional for [two] *one* year[s] from the date of the last activity or position which gave rise to this designation and must continue its recordkeeping and reporting obligations under [r]*R*ules G–37 and G–8. It is incumbent upon each dealer to determine whether the person is an associated person pursuant to Section 3(a)(18) of the Securities Exchange Act of 1934. If so, then in addition to recordkeeping and reporting obligations, dealers should be mindful that any contributions made by this associated person during the [two] *one*-year designation period (other than contributions that qualify for the rule's $250 *de minimis* exception) will subject the dealer to the rule's ban on municipal securities business for two years from the date of such contribution. Of course, the ban can only be triggered if the person previously was a municipal finance professional.

(August 6, 1996)

IV.17

Q: A municipal finance professional resigns from a dealer, but still remains an associated person of the dealer (*e.g.*, by retaining a position in the dealer's holding company). May the dealer cease designating this person a municipal finance professional for purposes of the recordkeeping and reporting requirements under [r]*R*ules G–37 and G–8? In addition, may this person make contributions to issuer officials without causing the dealer to be banned from municipal securities business with such issuers?

A: [As noted above in Q&A number 4, if] *If* a person is no longer a municipal finance professional because he or she has left the dealer's employ, but nevertheless remains an associated person of the dealer, then the dealer must continue to designate this person a municipal finance professional for [two] *one* year[s] from the last activity or position which gave rise to such designation. Moreover, any contributions by this associated person (other than those that qualify for the *de minimis* exception under [r]*R*ule G–37(b)) will subject the dealer to the rule's ban on municipal securities business for two years from the date of the contribution.

(August 6, 1996)

IV.18

Q: In making the determination of which associated persons of a dealer meet the definitions of municipal finance professional and *non-MFP* executive officer, is it correct to designate all the executives of the dealer (*e.g.*, President, Executive Vice Presidents) under the category of *non-MFP* executive officers?

A: No. In making the determination of whether someone is a municipal finance professional or *non-MFP* executive officer, one must review the activities of the individual and not his or her title. Rule G–37(g)(iv) defines the term ''municipal finance professional'' as:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in [r]*R*ule G–3(a)(i)*, provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A)*;

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and

(ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to [r]*R*ule G–1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]*R*ule G–1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Rule G–37(g)(v) defines the term ''*non-MFP* executive officer'' as: an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]*R*ule G–1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that, if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no *non-MFP* executive officers. [emphasis added]

Dealers should first review the activities of their associated persons to determine whether they are municipal finance professionals, and then, once that list of individuals has been established, conduct a review of the remaining associated persons to determine whether they are *non-MFP* executive officers. Dealers should pay close attention to those associated persons who are soliciting municipal securities business and, thus, will be considered municipal finance professionals. The Board has previously stated that solicitation activities may include, but are not limited to, responding to issuer Requests for Proposals, making presentations of public finance and/or municipal marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so. [(*See* ''Additional Rule G–37 Questions & Answers,'' *MSRB Reports,* Vol. 14, No. 5 (December 1994) at 8).]

(September 9, 1997)

Non-MFP Executive Officer

IV.19

Q: Who is a[n] *non-MFP* ''executive officer?''

A: Pursuant to [r]*R*ule G–37(g)(v), a[n] *non-MFP* executive officer is defined as any associated person in charge of a principal business unit, division or function, or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in [r]*R*ule G–1), but does not include any municipal finance professional.

(May 24, 1994)

IV.20

Q: In a bank with a separately identifiable dealer department, who would be considered a[n] *non-MFP* executive officer?

A: For most bank dealer departments which deal only in municipal securities, there are no individuals who meet the definition of *non-MFP* executive officer within [r]*R*ule G–37.

(August 18, 1994)

Official of an Issuer

IV.21

Q: How is the term ''official of an issuer'' defined in [r]*R*ule G–37?

A: Rule G–37(g)(vi) defines the term ''official of an issuer'' [as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. The definition includes any issuer official or candidate (or successful candidate) in a position which has influence over the awarding of municipal securities business.] *to mean ''any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.* Thus, contributions to certain state-wide executive or legislative officials would be included within the prohibition on engaging in municipal securities business.

(May 24, 1994)

IV.22

Q: How can a dealer determine whether an incumbent or candidate for a particular elective office will be able to award or influence the awarding of municipal securities business? For example, in many states, such influence is found in executive branch elected officials, not legislative branch officials.

A: The dealer must review the scope of authority of the particular office at issue, whether executive or legislative branch, not the individual, to determine whether influence over the awarding of municipal securities business is present.

(May 24, 1994)

IV.23

Q: An incumbent was seeking re-election as an issuer official but she lost the election. She is now soliciting money to pay for the debt incurred in connection with this election. Would there be a prohibition on engaging in municipal securities business with the issuer if a dealer or a municipal finance professional provides money for the payment of this debt?

A: No, under certain conditions. If the incumbent is out of office at the time she is soliciting money to pay for the election debt, then she is no longer considered to be within the definition of ''official of an issuer'' and any monies given for the payment of debt incurred in connection with the election in this instance is not subject to [r]*R*ule G–37. If the incumbent still holds her issuer official position at the time she is soliciting money to pay for the election debt, then, if a municipal finance professional contributed $250 to her during the general election, the municipal finance professional would not be able to make any contributions for the payment of debt without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to the incumbent prior to

the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may not contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

(September 9, 1997)

Dealer-Controlled PAC

IV.24

Q: What is a ''dealer-controlled'' PAC?

A: Each dealer must determine whether a PAC is dealer controlled. For dealers, other than bank dealers, one may assume that any PAC of the dealer would be considered a dealer-controlled PAC for purposes of [r]*R*ule G–37. For bank dealers, it will depend upon whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.

(May 24, 1994)

V. Scope of Waiver Provision in Rule G–37(i)

V.1

Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to [r]*R*ule G–37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a [r]*R*ule G–37 violation?

A: Rule G–37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G–37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate [r]*R*ule G–37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.

(March 1, 2000)

VI. Recordkeeping and Reporting (Rules G–37(e), G–8 and G–9)

[Q: Does a dealer have to collect information on political contributions for the two years prior to April 25, 1994]

[A: No. Records do not have to be maintained for contributions made or municipal securities business engaged in prior to April 25, 1994.

(May 24, 1994)]

VI.1

Q: If a dealer has instituted an internal voluntary ban on political contributions, is the dealer still subject to the recordkeeping requirements?

A: Yes. The Board amended [r]*R*ule G–8 and G–9, on recordkeeping and record retention, respectively, to require each dealer to maintain records of certain information. This recordkeeping is designed to assist dealers in determining whether or not they may engage in business with a particular issuer, as well as to facilitate compliance with, and enforcement of, [r]*R*ule G–37.

(May 24, 1994)

[Q: Rule G–8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term ''issuer'' includes the issuer of a separate security as defined in SEC Rule 3b–5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of a separate security is a private corporation, not a government entity. Must we record these ''issuers''?]

[A: No, such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded.

(May 24, 1994)]

VI.2

Q: Rule G–8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term ''issuer'' includes the issuer of a separate security as defined in SEC Rule 3b–5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of a separate security is a private corporation, not a government entity. Must we record these ''issuers''?

A: No. Such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. Of course, dealers are required to record the governmental issuer in these situations, for both taxable and tax-exempt municipal securities.

(December 7, 1994)

VI.3

Q: What are the reporting requirements under rule G–37?

A: [Each dealer is required to file two copies of Form G–37 within 30 calendar days after the end of each calendar quarter (*i.e.*, by January 31, April 30, July 31 and October 31). The Board recently filed an amendment to rule G–37 with the SEC to require that the forms be submitted by certified or registered mail or some other equally prompt means that provides a record of sending. *See* the rule filing, SR–MSRB–94–5, for more information about this amendment.] *Dealers are required to submit Form G–37/G–38 to the MSRB by the last day of the month following the end of each calendar quarter. These submission dates correspond to January 31, April 30, July 31 and October 31 of each year. There is no fixed time frame for submission of Form G–37x. However, if a dealer wishes to rely on the Form G–37x exemption from the Form G–37/G–38 submission requirement for a particular calendar quarter, Form G–37x must be submitted by no later than the submission deadline for such quarter.*

(May 24, 1994)

VI.4

Q: Under what circumstances must Form G–37/*G–38* be filed with the Board?

A: [Form G–37 must be filed with the Board if, during the reporting period, (i) political contributions were made by those entities and/or persons subject to rule G–37, and/or (ii) the dealer engaged in municipal securities business with an issuer, as defined in rule G–37(g)(vii). Rule G–37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business. However, the making of contributions and the resulting awarding of municipal securities business may not come within a single reporting period. Thus, it is important that information on political contributions be disclosed even if no municipal securities business was engaged in during the reporting period. So too, it is important to disclose

municipal securities business even if no political contributions were made during the reporting period. However, a dealer is not required to file Form G–37 if no political contributions were made and the dealer did not engage in municipal securities business during the reporting period.] *Form G–37/G–38 must be submitted to the Board for a calendar quarter if ANY one of the following occurred: (i) reportable political contributions or payments to political parties were made during the reporting period, unless the dealer has previously submitted Form G–37x and the submission remains effective; (ii) the dealer engaged in municipal securities business during the reporting period; or (iii) the dealer used consultants during the reporting period (i.e., new or continuing relationship with consultants).*

(May 24, 1994)

VI.5

Q: Does a dealer have to complete the section of Form G–37/*G–38* concerning issuers with whom the dealer has engaged in municipal securities business if the only municipal securities related business engaged in during the reporting period was as a selling group member?

A: No. Rule G–37 does not define ''municipal securities business'' to include selling group member activities.

(May 24, 1994)

VI.6

Q: Which contributions to officials of issuers and political parties of states and political subdivisions must be disclosed to the Board on Form G–37/*G–38*?

A: Those contributions which are required to be recorded pursuant to rule G–8(a)(xvi). These include (i) the contributions, direct or indirect, to officials of an issuer and to political parties of states and political subdivisions made by the dealer and each PAC controlled by the dealer (or controlled by any municipal finance professional of such dealer); (ii) the contributions, direct or indirect, to officials of an issuer made by each municipal finance professional and *non-MFP* executive officer, however, such records need not reflect any contribution made by a municipal finance professional or *non-MFP* executive officer to officials of an issuer for whom such person is entitled to vote if the contributions by each such person, in total, are not in excess of $250 to any official of an issuer, per election; and (iii) the contributions, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals and *non-MFP* executive officers, however, such records need not reflect those contributions made by any municipal finance professional or *non-MFP* executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the contributions by each such person, in total, are not in excess of $250 per political party, per year.

(May 24, 1994)]

[Q: The disclosure of the compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business must be included on Form G–37. Does this include disclosure of the compensation arrangements of municipal finance professionals?]

[A: No. The Board recently filed with the SEC an amendment to the rule to clarify this point. See the rule filing, SR–MSRB–94–5, for more information about this provision.

(May 24, 1994)]

VI.7

Q: May non-dealers (*e.g.*, attorneys, independent financial advisors) voluntarily submit information on political contributions and other activities to the Board?

A: Yes, as long as the filing procedures are followed.

(May 24, 1994)

VI.8

Q: Will the Forms G–37 submitted to the Board be available for public review?

A: Yes. *The Forms G–37/G–38 and Forms G–37x submitted to the Board are posted on the Board's Web site for viewing* (*http://www.msrb.org*). In addition, [O]*one* copy of each Form G–37 will be maintained at the Board's Public Access Facility in Alexandria, Virginia. These forms will be available to the public for review and photocopying. The Board will charge 20 cents per page plus sales tax, if applicable, for photocopying.

(May 24, 1994)

[Q: Will the Board answer telephone inquiries as to whether a report has been filed?]

[A: Yes. The Board will maintain a database of reports filed by each dealer (as well as any other party voluntarily submitting information on political contributions), so that any member of the public may telephone the Board's offices to inquire whether a certain dealer (or other party) has submitted a report pursuant to rule G–37. In order to further enhance public access to this information, the Board will provide a list of companies that offer document retrieval and mailing services.

(May 24, 1994)]

VI.9

Q: May a holding company submit to the Board one Form G–37/G–38 reflecting information for various dealers within the control of the holding company?

A: No. A separate Form G–37/*G–38* must be submitted for each dealer.

(February 16, 1996)

VI.10

Q: Rule G–37(e) requires, among other things, that dealers submit information to the Board on Form G–37/G–38 about the municipal securities business in which they engaged. Is information about the municipal securities business engaged in required to be submitted by all syndicate and selling group members, or is it only the responsibility of the manager(s) to submit such information on behalf of the syndicate?

A: All manager(s) and syndicate members (excluding selling group members) must separately report the municipal securities business in which they engaged.

(September 9, 1997)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section 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

Since the adoption of Rule G–37, on political contributions and prohibitions on municipal securities business, the MSRB has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry in understanding and complying with the provisions of the rule, the MSRB has published a series of interpretive notices that set forth, in Q & A format, general guidance on Rule G–37.

On May 8, 2003, amendments to Rule G–37 became effective concerning revisions to the definition of municipal finance professional and the exemption process.[3] The proposed rule change revises certain of the Rule G–37 Qs & As to reflect the new rule language as contained in the amendments, primarily concerning the definition of municipal finance professional. The proposed rule change also revises certain Rule G–37 Qs & As to reflect subsequent changes to the rule since the time the particular Qs & As were adopted. In addition, the MSRB has been publishing the Rule G–37 Qs & As in chronological order. The proposed rule change rearranges the order of the Qs & As by grouping them by subject matter. This should make their presentation more helpful to users of the Qs & As.

2. Basis

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that it provides guidance to brokers, dealers and municipal securities dealers in complying with existing MSRB rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act,[4] which renders the proposed rule change effective upon receipt of this filing by the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2003–08 and should be submitted by December 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28763 Filed 11–17–03; 8:45 am]

BILLING CODE 8010–01–P

[3] Release No. 34–47814 (May 8, 2003), 68 FR 25917 (May 14, 2003).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3549]

State of Delaware; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 23, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to November 24, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–28713 Filed 11–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3557]

State of Washington

As a result of the President's major disaster declaration on November 7, 2003, I find that Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Okanogan, Pierce, San Juan, Skagit, Snohomish, Thurston and Whatcom Counties in the State of Washington constitute a disaster area due to damages caused by severe storms and flooding occurring on October 15 through October 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 6, 2004 and for economic injury until the close of business on August 9, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Douglas, Ferry, Grant, Kittitas, Lewis, Lincoln, Pacific and Yakima in the State of Washington.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (Including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 355706 and for economic injury the number is 9X8400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 7, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–28714 Filed 11–17–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (HHS/ACF/OCSE)) Match Number 1074

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on December 9, 2003.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (HHS/ACF/OCSE).

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–5328 or writing to the Associate Commissioner, Office of Income Security Programs, 200 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for the Office of Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 7, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Health and Human Services (HHS)/Administration on Children and Families (ACF)/Office of Child Support Enforcement (OCSE) with the Social Security Administration (SSA).

A. Participating Agencies

SSA and OCSE.

B. Purpose of the Matching Program

The matching program is designed to assist SSA in establishing or verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, as authorized by the Social Security Act and by the Privacy Act. Under the matching program, SSA will obtain quarterly wage, new hire, or unemployment insurance information from OCSE.

C. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by SSA to OCSE, OCSE will provide SSA with electronic files containing Quarterly Wage, New Hire and Unemployment Insurance information in National Directory of New Hires of its Federal Parent Locator Service system of records. SSA will then match the OCSE data with title XVI payment information maintained in Supplemental Security Income Record and Special Veterans Benefits system of records.

D. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03–28757 Filed 11–17–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Final Environmental Impact Statement; Jefferson and Lewis & Clark Counties, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 and the Montana Environmental Policy Act (MEPA), the FHWA, in cooperation with the Montana Department of Transportation (MDT), has prepared a Final Environmental Impact Statement (FEIS) for proposed transportation improvements along the I–15 Corridor in Lewis & Clark and Jefferson Counties, Montana. The alternative evaluated in the FEIS include the Preferred Alternative (Alternative 1), Alternative 2 and the No-Action Alternative, and their associated social, economic and environmental impacts. Interested citizens are invited to review the Final EIS and submit comments. Copies of the Final EIS may be obtained by telephoning or writing the contact persons listed below under the **FOR FURTHER INFORMATION CONTACT** heading. Public reading copies of the Final EIS

are available at the locations listed under **SUPPLEMENTARY INFORMATION.**

DATES: A 30-calendar-day public review period will begin on November 21, 2003. Written comments on the alternatives and impacts to be considered must be received by MDT by December 22, 2003.

ADDRESSES: Written comments on the Final EIS should be addressed to Mr. Mark Studt, P.E., Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59601. Mr. Studt's e-mail address *is mstudt@state.mt.us.* Copies of the Final EIS are available for public inspection and review at the locations provided in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: To request copies of the Final EIS or for additional information, contact Mr. Mark Studt, Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena MT, 59601, Telephone: (406) 444–9191, or Mr. Carl James, Transportation Specialist, FHWA Montana Division, 2880 Skyway Drive, Helena MT, 59602, Telephone: (406) 449–5302, extension 238.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS are available in hard copy format for public inspection at:

- Montana Department of Transportation, Environmental Services, 2701 Prospect Avenue, Room 111, Helena MT, 59601, 406–444–0804.
- Federal Highway Administration, Montana Division Office, 2880 Skyway Drive, Helena, MT 59602, 406–449–5302.
- Jefferson County, Clerk & Recorder's Office, Jefferson County Courthouse, Boulder, MT 59632, 406–225–4020.
- Lewis & Clark County, City and County Transportation Office, City and County Building, Room 404, 316 North Park, Helena, MT 59601, 406–447–8457.
- East Helena City Hall, City Clerk's Office, 7 E. Main St., East Helena, MT 59635, 406–227–5321.
- Rossiter Elementary School, 1497 E. Sierra Road, Helena, MT 59602, 406–447–8860.
- Lewis & Clark County Library, 120 S. Last Chance Gulch, Helena, MT 59601, 406–447–1690.
- Boulder Community Library, 202 South Main, Boulder, MT 59632, 406–225–3241.
- Broadwater Community Library, 201 North Spruce, Townsend, MT 59644, 406–266–5060.
- Clancy Library, 6 North Main, Clancy, MT 59634, 406–933–5254.
- Bob's Valley Market, 7507 N. Montana Avenue, Helena, MT 59602, 406–458–5140.
- Montana City Store, 1 Jackson Creek Road, Montana City, MT 59634, 406–442–6625.
- Carter & Burgess, Inc., 707 17th Street, Suite 2300, Denver, CO 80202, 303–820–4894.

To receive a copy of the FEIS on CD or on-line, please contact Mr. Mark Studt at the address provided above.

Background

The Final EIS provides a detailed evaluation of the proposed transportation improvements along I–15 between the Montana City interchange and the Lincoln Road interchange and identifies a Preferred Alternative. The study area lies within the city of Helena, and in Lewis & Clark and Jefferson Counties, MT. The study area extends approximately 19 kilometers (12 miles) from Reference Post 187 to Reference Post 200. The Final EIS includes an examination of purpose and need, alternatives evaluated, travel demand, affected environment, environmental consequences, and mitigation measures as a result of the improvements under consideration. The identified Preferred Alternative (Alternative 1), Alternative 2 and a No-Action Alternative are presented in the Final EIS.

The Preferred Alternative (Alternative 1) is a composite of transportation improvements including a new South Helena interchange and a new northern interchange at Custer Avenue. This alternative is designed to optimize corridor transportation improvement without incurring undesirable environmental impacts. This alternative is enhanced by including five supporting elements to complete the proposed improvements. The major components of the alternative are:

- New interchange at South Helena
- Interchange improvements at Capitol
- New interchange at Custer Avenue
- Conceptual design for widening of Custer Avenue between N. Montana Avenue and N. Washington Street includes four travel lanes with a median/turn lane and bicycle/pedestrian envelopes. Final design will determine the exact configuration.
- Construction of two auxiliary lanes (each direction) on I–15 between Custer Avenue and the Capitol interchange plus appropriate transitions for adding and dropping the auxiliary lanes (to be determined in final design).
- Minor realignment of east side Frontage Road at Custer Avenue.
- Replacement of the twin I–15 bridges over the Montana Rail Link railroad.
- Supporting elements:
- Montana City interchange improvements
- Connect west side Frontage Road between Montana City and Colonial Drive
- Broadway underpass for pedestrian and bicycle use
- Widen Cedar Street to five lanes from I–15 to N. Montana Avenue
- Lincoln Road interchange improvements

The FHWA, MDT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the evaluated alternatives and associated social, economic, or environmental impacts and mitigation measures related to the alternatives.

Issued on: November 10, 2003.

Dale W. Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, Montana.

[FR Doc. 03–28740 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16515]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FREDERICA LADY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16515 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and

the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16515. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FREDERICA LADY is:

Intended Use: ''Weekly bareboat and crewed charters to friends, acquaintances and business associates.''

Geographic Region: ''Norfolk, VA to Key West, FL.''

Dated: November 12, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28774 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16517]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Freedom of Flight.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16517 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16517. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202)366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Freedom of Flight is:

Intended Use: ''Recreational use in limited coastal charter and sail training for not more than 10 passengers.''

Geographic Region: ''East Coast from Virginia to Maine, and the U.S. Virgin Islands.''

Dated: November 12, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28769 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 16516]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GITANE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16516 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16516. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments

will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GITANE is:

Intended Use: ''sailing and scuba diving.''

Geographic Region: ''Texas.''

Dated: November 12, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28772 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16511]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KIWI.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16511 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16511. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KIWI is:

Intended Use: ''Sight-seeing, sail training/boat handling, navigation, coastal cruising''.

Geographic Region: ''California''.

Dated: November 13, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28771 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16513]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LUCKY LADY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16513 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16513. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LUCKY LADY is:

Intended Use: ''My wife and I live on San Juan Island in Washington State where we run a guesthouse. We would

like to be able to use our boat to service guests.''

Geographic Region: ''Washington State.''

Dated: November 12, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28773 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16514]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SORCERER II.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16514 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16514. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SORCERER II is:

Intended Use: ''Domestic and International Oceanographic research.''

Geographic Region: ''Cape Cod (Massachusetts) to Florida Keys.''

Dated: November 12, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28776 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 16512]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Y2.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16512 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16512. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Y2 is:

Intended Use: ''Operate the vessel as Twin Adventures Sailing School, Inc.''

Geographic Region: ''Coastal waters of the Eastern United States and Intracoastal Waterway.''

Dated: November 13, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28770 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16508]

Notice of Receipt of Petition for Decision That Nonconforming 2000 MV Augusta F4 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 MV Augusta F4 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 MV Augusta F4 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St, SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] 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: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Superbike Racing, Inc. of Atlanta, Georgia (''SRI'')(Registered Importer 1–286) has petitioned NHTSA to decide whether non-U.S. certified 2000 MV Augusta F4 motorcycles are eligible for importation into the United States. The vehicles that SRI believes are substantially similar are 2000 MV Augusta F4 motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Cagiva Motor S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 MV Augusta F4 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SRI submitted information with its petition intended to demonstrate that non-U.S. certified 2000 MV Augusta F4 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 MV Augusta F4 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies, which incorporate DOT certified headlamps; (b) replacement of all stop lamp and directional bulbs with ones that are certified to DOT requirements; (c) replacement of all lenses with ones that are certified to DOT requirements.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28811 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16510]

Notice of Receipt of Petition for Decision That Nonconforming 1999–2003 Ducati 748 and 916 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2003 Ducati 748 and 916 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic

Safety Administration (NHTSA) of a petition for a decision that 1999–2003 Ducati 748 and 916 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] 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: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Superbike Racing, Inc. of Atlanta, Georgia (''SRI'')(Registered Importer 1–286) has petitioned NHTSA to decide whether non-U.S. certified 1999–2003 Ducati 748 and 916 motorcycles are eligible for importation into the United States. The vehicles that SRI believes are substantially similar are 1999–2003 Ducati 748 and 916 motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Ducati Motor S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999–2003 Ducati 748 and 916 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SRI submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2003 Ducati 748 and 916 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2003 Ducati 748 and 916 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies, which incorporate DOT certified headlamps; (b) replacement of all stop lamp and directional bulbs with ones that are certified to DOT requirements; (c) replacement of all lenses with ones that are certified to DOT requirements.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28812 Filed 11–17–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34428]

Port Authority of New York and New Jersey—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of the Port Authority of New York and New Jersey (Port Authority) for an order declaring that the construction by petitioner of a connector between the line of the former Staten Island Railroad (SIRR) and the rail lines owned and operated by Norfolk Southern Railway Company (NS), CSX Transportation, Inc. (CSX), and Consolidated Rail Corporation (Conrail), and any operation over this newly constructed connector, do not constitute the extension of a line of railroad and require no Board approval.

DATES: Any interested person may file with the Board written comments concerning the Port Authority's petition by December 18, 2003. Replies will be due on January 7, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34428 to: Surface Transportation Board, 1925 K Street,

NW., Washington, DC 20423–0001. In addition, send one copy of any comments to petitioner's representative: Paul M. Donovan, LaRoe, Winn, Moerman & Donovan, 4135 Parkglen Court, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: By petition filed on October 22, 2003, the Port Authority asks the Board to issue an order declaring that the construction and operation of a connector between the SIRR line and the Chemical Coast Secondary Line [1] will not constitute an extension of a line of railroad nor the construction of an additional line of railroad that would require Board approval.

The Port Authority states that the SIRR was abandoned in 1990 and 1991, and that the Port Authority and the City of New York [2] have acquired the rail lines necessary to revitalize the SIRR. Petitioner further indicates that the revitalized SIRR will not extend west of the New Jersey Turnpike, but will connect to the Chemical Coast Secondary Line by way of the newly constructed, far more efficient connector.

The Port Authority states that the connector will consist of a new single-track rail alignment approximately 3,650 feet long.[3] The Port Authority asserts that this connector will replace the various other connections that have existed between the SIRR and NS, CSX, and Conrail lines at Cranford, Linden, and Bayway, NJ, and the connections provided by car float between St. George and Port Ivory, NY, and Port Newark, NJ.[4]

Under 49 U.S.C. 10901(a), Board approval is required in situations where a person wishes to ''(1) construct an extension to any of its railroad lines; [or] (2) construct an additional railroad line; * * *'' According to the Port Authority, ''the final test in determining whether proposed trackage constitutes an extension is whether the effect of the new trackage is to extend substantially the line of a carrier into new territory,'' citing *City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995).

The Port Authority argues that the proposed connector does not involve the construction of an ''extension'' of a line of railroad, nor does it constitute an ''additional'' line, the construction of which would require Board approval. Rather, petitioner argues that the connector merely permits a more efficient connection than those that have historically existed and which could be reactivated without Board approval. Specifically, the Port Authority maintains that it controls and could reactivate the Port Ivory and Port Newark Port Authority float bridges,[5] to form a route that parallels the route provided by the proposed connector, without Board approval.[6] According to the Port Authority, construction of the connector will neither open up new traffic routes nor expand service into new territory.

Finally, the Port Authority requests expedited consideration of its request so that the SIRR reactivation project may advance as quickly as possible. The Port Authority claims that the Howland Hook Container Terminal, Inc. (Howland Hook), located on Staten Island, NY, is at a severe competitive disadvantage compared to other major container terminals on the Atlantic Coast in that it does not have direct rail service. Petitioner maintains that, as a result, containers handled at Howland Hook must be drayed to intermodal rail facilities in New Jersey, producing a great deal of truck traffic in an already congested, non-attainment air quality area. This results in significant drayage costs for Howland Hook and negative environmental consequences.

By this notice, the Board is requesting comments on the Port Authority's petition.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28753 Filed 11–17–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Conrail owns the Chemical Coast Secondary Line and, as a result of that ownership, has the right to operate over it. Moreover, because this line is part of the North Jersey Shared Assets Area, CSX and NS also have the right to operate over it. *See CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196, 228 (1998).

[2] According to the Port Authority, this construction project, called the Staten Island Railroad Reactivation Project, is one part of a plan for reactivation of the operations of the former SIRR. Petitioner indicates that it will soon file a notice of a modified certificate of public convenience and necessity pursuant to 49 CFR 1150.21–.24, advising of the designation of CSX and NS as the modified certificate operators of certain lines of the SIRR that had been abandoned and then acquired by the City of New York and the State of New Jersey. Also, on October 29, 2003, the New York City Economic Development Corporation (NYCEDC), which manages the New York properties of the former SIRR on behalf of New York City, filed a petition for a declaratory order with respect to the proposed construction of switching, industrial lead, and spur track on the Travis Branch of the former SIRR.

[3] The project will also entail the construction of two new bridges and the rehabilitation of an existing steel viaduct.

[4] Prior to its abandonment in 1991, the SIRR interchanged freight with several rail carriers via car float operations. These operations, also called lightering, employed various types of towed or self-propelled floating equipment. Car floats with railroad tracks were towed between waterfront terminals on the New York Harbor. A system of tracks served the piers at the terminals, allowing rail cars to be moved from the car floats, over float bridges, to the terminals. In 1934, the ICC held that the term ''railroad'' includes ''all * * * lighters * * * used by or operated in connection with any railroad,'' and that the term ''transportation'' includes ''vessels and all instrumentalities and facilities of shipment or carriage.'' *Lighterage Cases,* 203 I.C.C. 481, 511–12 (1934).

[5] Petitioner notes, however, that it would not be economically feasible to do so.

[6] According to petitioner, these parallel routes have the same origins and destinations and serve the same shippers.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 208X)]

Union Pacific Railroad Company—Abandonment Exemption—in Marshall County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon an 8.13-mile line of railroad from milepost 133.13 near Marysville to milepost 125.00 near Marietta, in Marshall County, KS. The line traverses United States Postal Service Zip Code 66508.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 OFA has been received, this exemption will be effective on December 18, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 28, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920 Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 21, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) 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), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by November 18, 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: November 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28629 Filed 11–17–03; 8:45 am]

BILLING CODE 4915–00–P

[1] 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.

[2] 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

Submission for OMB Review; Comment Request

November 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 18, 2003 to be assured of consideration.

Departmental Offices/Office of International Monetary and Financial Policy

OMB Number: 1505–0010.

Form Number: FC–2.

Type of Review: Extension.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants.

Description: Collection of information on Form FC–2 is required by law. Form FC–2 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; foreign currency options and net delta equivalent value; foreign currency denominated assets and liabilities; net reported dealing position.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 21.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,008 hours.

OMB Number: 1505–0012.

Form Number: FC–1.

Type of Review: Extension.

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants.

Description: Collection of information on Form FC–1 is required by law. Form FC–1 is designed to collect timely information on foreign exchange spot, forward and futures purchased and sold; net options position, delta equivalent value long or short; net reported dealing position long or short.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 21.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 1,092 hours.

OMB Number: 1505–0014.

Form Number: FC–3.

Type of Review: Extension.

Title: Quarterly Consolidated Foreign Currency Report.

Description: Collection of information on Form FC–3 is required by law. Form FC–3 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; foreign currency denominated assets and liabilities; foreign currency options and net delta equivalent value.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 51.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,632 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Treasury PRA Clearance Officer.

[FR Doc. 03–28777 Filed 11–17–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–111–80]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–111–80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)–1).

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)–1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–28800 Filed 11–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0616]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine non-Federal nursing home or the residential care home qualification for providing care to veteran patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 20, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0616'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Furnishing Nursing Home Care to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–0616.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–1170 is an application used by nursing homes wishing to provide nursing home care to veterans who receive VA benefits. It gives the nursing home the opportunity to describe the building and its capacity, staffing, structure and programming.

b. VA Form 10–2407 is an application used by a residential care facility or home that wishes to provide residential home care to veterans. It serves as the agreement between VA and the residential care home that the home will submit to an initial inspection and comply with VA requirements for residential care.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden:

a. VA Form 10–1170—167 hours.

b. VA Form 10–2407—83 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–1170—20 minutes.

b. VA Form 10–2407—5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 10–1170—500.

b. VA Form 10–2407—1,000.

Dated: November 5, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28679 Filed 11–17–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify persons authorized to certify reports on behalf of an educational institution or job training establishment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 20, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0262'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Certifying Official(s), VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: Education institution or job training establishment use VA Form 22–8794 to notify VA of the designated person(s) who may certify reports of the enrollment and pursuit or training on behalf of an educational institution or job training establishment. The information is used to ensure that educational benefits are not made improperly based on a report from someone other than a designated certifying official.

Affected Public: State, Local or Tribal Government, Business or other for-profit, and Not for-profit institutions.

Estimated Annual Burden: 333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: November 5, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28680 Filed 11–17–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Tuesday, December 2, 2003, from 1:30 p.m. until 4:15 p.m., and Wednesday, December 3, 2003 from 8:15 until 4 p.m., in the 7th floor conference room of The American Legion, 1608 K St. NW., Washington, DC 20006. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors and direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On December 2, Committee members will discuss the status of the recommendations to the Secretary; receive a briefing on VA educational resources and polices; discuss their work plan; and, as time permits, begin discussion of educational recommendations. On December 3, the Committee will receive an update on the status of the chiropractic occupational study; continue discussions on educational issues; and discuss the agenda for the next meeting.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Designated Federal Officer, at (202) 273–8558 no later than noon Eastern time on Tuesday, November 25, 2003, in order to facilitate entry to the building.

Public comments will not be accepted at the meeting. It is preferred that any comments be transmitted electronically to *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Primary Care, Medical Surgical Services SHG (111), U.S. Department of Veterans

Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Items mailed via United States Postal Service require 7–10 days for delivery due to delays resulting from security measures.

Dated: November 10, 2003.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–28681 Filed 11–17–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold a meeting on December 4–5, 2003, at the Double Tree Hotel San Antonio Airport, 37 NE Loop 410 at McCullough, San Antonio, TX 78216. On December 4, the meeting will begin with registration at 8:30 a.m. and adjourn at 5 p.m. On December 5, the meeting will begin with registration at 7:30 a.m. and adjourn at 2 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

On December 4, the Commission will discuss the chapters for its final report and each team will make presentations on proposed final draft recommendations. Draft recommendations will be presented according to how they will be listed under chapter heading. On December 5, the Commission will discuss and select draft recommendations for its final report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statement for review by the Commission in advance of the meeting to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: November 10, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–28682 Filed 11–17–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
November 18, 2003

Part II

Environmental Protection Agency

40 CFR Chapter 1

Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FRL–7585–6]

RIN 2060–AL71

Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPR) requests public comment regarding options to promote a more consistent framework for the disposal of radioactive waste with low concentrations of radioactivity (''low-activity''). Of immediate interest is low-activity mixed waste (LAMW). This waste is both chemically hazardous according to the Resource Conservation and Recovery Act (RCRA) and is radioactive with low radionuclide concentrations under the purview of the Atomic Energy Act of 1954 (AEA). Such waste is regulated and managed under both authorities but under certain conditions, one authority may be sufficient to provide public health and environmental protection. In particular, given appropriate limits on radionuclide concentrations in LAMW, disposal of LAMW in RCRA Subtitle C hazardous waste landfills, with their prescribed engineering design and associated RCRA requirements (*e.g.*, waste treatment, waste form), may provide protection of public health and the environment. This document focuses on effective use of the RCRA–C disposal technology for the disposal of LAMW. We (the Environmental Protection Agency) seek comment on standards that would codify this approach and provide greater flexibility for the safe disposal of LAMW.

Beyond LAMW, however, there is a wide variety of radioactive wastes with relatively low concentrations of radioactivity; these wastes are not considered mixed wastes because they are not regulated under both RCRA and the AEA. Examples of such low-activity waste include certain AEA radioactive wastes, certain wastes from the extraction of uranium or thorium (such as those generated by the Formerly Utilized Sites Remedial Action Program (FUSRAP)), a variety of wastes that fall into the technologically enhanced naturally occurring radioactive materials (TENORM) category, and certain decommissioning wastes. Some AEA wastes are deferred from regulation, such as ''unimportant quantities'' of source material with less than 0.05 percent uranium or thorium, and would be characterized as another form of low-activity radioactive waste (LARW, of which low-activity mixed waste would be a subset). Some radioactive wastes are regulated strictly down to the last atom while other low-activity wastes are regulated primarily for their chemically hazardous constituents. Some of these wastes may be unregulated or regulated under a framework lacking clarity and consistency. We seek comment on possible regulatory and non-regulatory options to provide a more coherent framework to manage LARW, and information to improve the scientific characterization of such wastes.

We envision that any standards promulgated to address the use of the RCRA–C disposal technology for LAMW (or, more broadly, LARW) would offer a new disposal option for these wastes. This would provide the flexibility to allow States, disposal facility operators, and waste generators to account for specific State or local regulatory constraints and economic considerations in determining whether they would choose to implement this disposal option for protective management and disposal of these wastes.

DATES: To ensure that your comments will be considered in future actions related to this document, please submit your comments no later than March 17, 2004.

ADDRESSES: Comments may be submitted by mail to: Air and Radiation Docket, Environmental Protection Agency, EPA West Room B108, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0095. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section. Please be aware that mail addressed to EPA headquarters may experience delays in delivery resulting from physical security screening. We will consider that fact when evaluating comments received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Dan Schultheisz, Radiation Protection Division, Office of Radiation and Indoor Air, Mailcode: 6608J, United States Environmental Protection Agency, Washington, DC, 20460–0001; telephone (202) 343–9300; e-mail *schultheisz.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2003–0095. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation 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 from 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 Air and Radiation Docket is (202) 566–1742.

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/.* It will also be available, along with general information relevant to this ANPR, such as Frequently Asked Questions (FAQ), through EPA's Radiation Program Home Page at *http://www.epa.gov/radiation/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public

docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, but will do so at its discretion.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0095. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2003–0095. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, Environmental Protection Agency, EPA West Room B108, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0095.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket in the EPA Docket Center, EPA West Room B108, 1301 Constitution Ave., NW., Washington, DC, 20004, Attention Docket ID No. OAR–2003–0095. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. *By Facsimile.* Fax your comments to (202) 566–1741, Attention Docket ID. No. OAR–2003–0095.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be Confidential Business Information electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Dan Schultheisz, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air, Mailcode: 6608J, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0095. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Acronyms and Abbreviations

We use many acronyms and abbreviations in this preamble. For your convenience and reference, they are:

AEA—The Atomic Energy Act
AEC—The Atomic Energy Commission
ANPR—Advance notice of proposed rulemaking
CED(E)—Committed effective dose (equivalent)
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act (also known as Superfund)
CFR—Code of Federal Regulations
DOE—The United States Department of Energy
EPA—The United States Environmental Protection Agency
FR—**Federal Register**
FUSRAP—Formerly Utilized Sites Remedial Action Program
GTCC—Greater-Than-Class C low-level radioactive waste
HWIR—Hazardous Waste Identification Rule
LAMW—Low activity mixed waste
LARW—Low activity radioactive waste
LLRW—Low-level radioactive waste
MCL—Maximum Contaminant Level
MLLW—Mixed low-level radioactive waste
MW—Mixed waste
NESHAPS—National emission standards for hazardous air pollutants
NRC—The United States Nuclear Regulatory Commission
OMB—The Office of Management and Budget
ORIA—EPA's Office of Radiation and Indoor Air
OSW—EPA's Office of Solid Waste
OSWER—EPA's Office of Solid Waste and Emergency Response
RCRA—The Resource Conservation and Recovery Act
RCRA—C—Subtitle C of RCRA
TEDE—Total effective dose equivalent
TENORM—Technologically Enhanced Naturally Occurring Radioactive Materials
TRU—Transuranic waste
TSCA—Toxic Substance Control Act
UMTRCA—Uranium Mill Tailings Radiation Control Act
USACE—United States Army Corps of Engineers
UTS—Universal Treatment Standards

What Do We Mean by Certain Terms?

Throughout this ANPR, we refer to ''Low-Level Radioactive Waste,'' ''Mixed Waste,'' ''Low-Activity Low-Level Radioactive Waste,'' ''Low-Activity Mixed Waste,'' and ''Low-Activity Radioactive Waste.'' Each of these terms has a distinct meaning within the context of this document (though not necessarily a regulatory or statutory definition). We want to avoid confusion wherever possible, so we offer these definitions to help you better understand the discussion.

When we say ''Low-Level Radioactive Waste'' (or LLRW), we always mean a specific kind of radioactive material defined at section 2(16) of the Nuclear Waste Policy Act as radioactive waste that is not spent nuclear fuel, high-level waste, transuranic waste, or uranium and thorium mill tailings. Under 10 CFR part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' the NRC regulates disposal of LLRW in near-surface disposal facilities. The NRC has defined three classes of LLRW in part 61 (classes A, B, and C) based on their radionuclide content and half-life. Under the part 61 waste classification and disposal site design, siting, and waste acceptance scheme, waste with radionuclide content that exceeds Class C still is regulated as LLRW, but generally is not acceptable for near-surface disposal. The Department of Energy (DOE) regulates LLRW under its own AEA authority (*see* DOE Order 435.1).

When we say ''Mixed Waste'' (or MW), we always mean waste that is regulated under both the Resource Conservation and Recovery Act (RCRA) as hazardous waste and under the AEA as radioactive material. This document is concerned only with MW containing LLRW, so-called mixed low-level waste (MLLW). MLLW can include LLRW Classes A, B, and C, and greater-than-class C. Non-AEA radioactive wastes mixed with hazardous waste are not technically MW, although they may be managed in a similar way.

We are introducing today the term ''low-activity'' to represent the idea that some radioactive wastes may contain radionuclides in small enough concentrations to allow them to be managed in ways that are fully protective of public health and the environment but do not require all of the radiation protection measures necessary to manage higher-activity radioactive material. As used in this document, ''low-activity'' is a conceptual term that does not have a statutory or regulatory meaning. This document outlines and requests public comment on methods that could be used in future actions to define ''low-activity'' wastes. ''Low-activity'' wastes would be subsets of broader waste categories, such as those defined previously. This document discusses several types of ''low-activity'' waste, including:

- ''Low-activity'' LLRW;
- ''Low-activity'' MW (LAMW);
- ''Low-activity'' radioactive waste (LARW)—this is a broad category that includes low-activity LLRW and LAMW, as well as other wastes such as those primarily regulated at the State level (*e.g.*, TENORM wastes, where the term ''technologically enhanced'' means that human activity has concentrated the natural radioactivity or increased the potential for human exposure).

Finally, when we say ''byproduct material'' we are using the definition in section 11e of the AEA. The discussion in section III of this document focuses on ''pre-UMTRCA byproduct materials'' not regulated by the NRC. (''Pre-UMTRCA byproduct materials'' are tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content that NRC has concluded are outside its jurisdiction under section 11e.(2) of the AEA. This is discussed further in section III.B of this document. The FUSRAP cleanups address much of the pre-UMTRCA byproduct material.)

Questions for Public Comment

Consistent with the purpose of an Advance Notice of Proposed Rulemaking, we are asking many questions about the concepts described in this document. Because this document covers a broad variety of topics and possibilities, we note throughout the text the issues on which we would like public comment. We

have also collected questions at the end of sections II, III, and IV, and additional questions may be found in the ''Request for Information'' sections (*see* the ''Outline of Today's Action''). The questions at the end of each section are focused on the material presented in those sections; however, commenters may feel that information in a later section is relevant to a question in an earlier section, or vice versa. We encourage commenters to address the questions as they believe most appropriate. Further, we welcome comments on any aspect of the text, not just on those points for which we specifically request comment. However, to facilitate our evaluation of and response to public comment, we ask that commenters clearly identify which issue(s) they are addressing and refer to relevant portions of the text in their comment.

Outline of Today's Action

I. Why Are We Publishing Today's ANPR?

Today's ANPR introduces a variety of approaches that might be applicable to certain low-activity radioactive waste categories (LARW).[1] We (the Environmental Protection Agency) seek public comment on the appropriateness of these approaches towards a coherent framework assuring appropriate management and disposal of such a diverse set of LARW. As discussed below, our intent is to develop a regulatory framework applicable to all LARW, which could include disposal of LARW at RCRA facilities, whether radioactive material addressed by the Atomic Energy Act under the jurisdiction of NRC or not. Our more immediate focus regards a simpler but protective approach to the present dual regulatory system applicable to low-activity mixed waste (LAMW). We seek comment on approaches that would reduce the burden of the dual regulatory framework for LAMW. One possibility would be to establish a regulatory framework to allow, under certain conditions, the disposal of LAMW at hazardous waste landfills under the purview of Subtitle C of RCRA. Under this approach, we and NRC could reach agreement on the appropriate conditions under which such disposal could take place. Ideally, the conditions that would apply to disposal of low-activity waste would be much simplified over those requirements that now apply to low-level waste disposal facilities which allow the disposal of higher concentrations of radioactive material. Upon such agreement, NRC would need to take regulatory action to allow AEA material under its jurisdiction to be sent to Subtitle C landfills. This would, in

[1] It is important to understand that the term ''low-activity'' does not have a precise statutory or regulatory definition. We use the term throughout today's action to refer to wastes in which the radioactivity is low enough to potentially allow management alternatives that do not incorporate the entire range of radiation control practices, such as disposal at RCRA Subtitle C landfills. The situations and conditions that would define ''low-activity'' waste are the subject of today's action and potentially future rulemakings.

effect, expand the disposal options available for LAMW.

We recently took a similar approach to minimize dual regulation for mixed waste. Recognizing the compliance difficulties associated with the dual regulatory framework applicable to mixed waste, we promulgated subpart N to 40 CFR part 266 (''Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal''). (*See* 66 FR 27218, May 16, 2001.) This conditional exemption provides for a reduced regulatory burden for facilities that store, treat, transport, or dispose of mixed low-level waste (MLLW). Under certain conditions, certain mixed wastes are exempt from RCRA regulation, leaving only the requirements of the AEA to govern their storage, treatment, transportation.

In addition to LAMW, there are a variety of wastes with relatively low concentrations of radioactivity such as certain TENORM waste, certain AEA materials and certain decommissioning wastes for which the present institutional framework is less than clear. Some wastes are tightly regulated from origin through final disposal while others are presently unregulated. These wastes present a variety of radiological risks and, ideally, wastes with similar risks should be managed proportionately to the risk they represent. In this regard, there are a variety of tools that may achieve acceptable risk levels, with regulatory controls being one such tool. However, we recognize that other tools, such as voluntary guidance, ''best practices,'' industry standards, and the like have the potential to result in acceptable risk levels. In section III of this document, we seek comment on the use of these non-regulatory approaches for assuring and achieving acceptable risk levels from the disposal of these various wastes and what role EPA should play in creating a consistent and protective framework for limiting risk. Just as importantly, our ANPR seeks information regarding the characterization of wastes that fall in these categories, or information on other wastes that might be considered in conjunction with those named in this ANPR. Such information can only help to better characterize the risk inherent in these waste categories and lead to a more consistent, protective institutional framework.

We believe that the approach presented in today's action could provide the necessary flexibility for the safe disposal of LAMW and other LARW and might facilitate site cleanups. Informal discussions with various stakeholders (commercial mixed waste generators, DOE, disposal facility operators, State regulators, public interest groups) suggest a broad level of interest in the potential advantages of this approach. Today's document offers an opportunity for stakeholders to provide detailed comment on a variety of concepts and possibilities that could be used in a future rulemaking. If affected entities demonstrate support for such a rulemaking and provide information needed to develop technical and economic analyses, we would have a strong basis to pursue this effort beyond the ANPR stage. Similarly, NRC could use the approach described in this document to develop regulations addressing the disposal of LAMW or other low activity radioactive wastes from its (or Agreement State) licensees. In an effort that may affect the disposal of LARW, NRC held a workshop on May 21–22, 2003, to discuss alternatives for safely controlling solid materials that have no, or very small amounts of, radioactivity. One alternative for that material is placement in a RCRA Subtitle C (hazardous waste) or Subtitle D (solid waste) disposal facility. Therefore, some of the issues discussed in that workshop may be similar to some of the approaches discussed in this ANPR. Background materials (including the information collection efforts conducted by NRC) and current activities (including recent documents issued and plans for stakeholder input), as well as transcripts of the workshop, can be found at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=SM_RFC&st=ipcr.*

II. How Can the Disposal of LAMW Be Simplified?

As noted above, we have recently promulgated regulations that describe conditions under which RCRA defers to the NRC and Agreement State requirements under the AEA for the storage, treatment, transportation, and disposal of mixed low-level waste. We based this deferral on our determination that the AEA requirements as addressed by NRC's regulations for management of radioactive waste offered an adequate degree of human health and environmental protection when compared to that offered by RCRA for the hazardous components of MLLW. Our RCRA authority is much more comprehensive and wide-ranging than our AEA authority. Under RCRA, we define hazardous waste and regulate hazardous waste generation, transportation, treatment, and disposal, including the operation of facilities handling hazardous waste. However, RCRA specifically excludes certain AEA material from its jurisdiction (40 CFR 261.4(a)(4)). Under the AEA, for the protection of the general environment, we can establish generally applicable radiation protection standards that apply outside the boundaries of locations under the control of persons possessing or using radioactive material. NRC and DOE are responsible for establishing requirements for disposal of AEA material by such persons. For example, we have used this AEA authority to establish effluent release limits from facilities comprising the uranium fuel cycle in 40 CFR part 190. In the case of low-activity mixed waste a dual regulatory framework already exists to address the storage, treatment, transportation, and disposal of such waste. With the promulgation of subpart N to 40 CFR part 266, some of these requirements are eased but widespread implementation of this rule awaits adoption by the States before it can be implemented. (See 66 FR 27257, May 16, 2001.)

In an effort to further reduce the burden of this dual regulatory framework for mixed waste, one option would be to promulgate a standard (such as regulatory limits for radionuclides in the waste) in coordination with the NRC allowing the disposal of LAMW in Subtitle C (hazardous waste) RCRA landfills. We believe an appropriate rulemaking by EPA and NRC of this nature will achieve the same level of protectiveness while at the same time significantly reducing the effort (and cost) otherwise required to comply with two separate regulatory regimes. We focus on disposal because we are aware of a few thousand small generators who store their mixed waste indefinitely because of the lack of disposal options, or the high costs of disposal. We are concerned that this situation may lead to mishandling, illegal dumping, or the elimination of research on, and use of, medical diagnostic techniques resulting in less than optimum health care. A protective regulatory framework that is less expensive and less burdensome would encourage prompt disposal of such waste, avoiding the risks of mishandling and illegal disposal, while improving options for health care. Some Subtitle C treatment standards for land disposal result in stabilized, solidified, or vitrified treatment residues that will immobilize radiological components, as well as hazardous constituents. Also, RCRA requires landfills to have certain engineered barriers to minimize infiltration and prevent releases. These factors make disposal of LAMW in RCRA hazardous waste landfills an

attractive approach for a rulemaking. The key in this approach would be to determine what concentrations of radioactivity in LAMW are appropriate for disposal in a RCRA Subtitle C landfill. As the preamble to subpart N to 40 CFR part 266 noted, an evaluation of the requirements embodied in the respective regulatory frameworks for RCRA and AEA revealed that both offer significant protections to human health and the environment. (See 66 FR 27223, May 16, 2001.) In the following sections, we discuss more fully the option of pursuing a rulemaking allowing disposal of LAMW in a RCRA Subtitle C landfill.

A. What Needs To Be Done To Allow Protective Disposal of LAMW?

Because mixed waste contains both a hazardous chemical component and a radioactive component, the safe disposal of low-activity mixed waste must combine elements pertinent to both types of hazards. The RCRA regulatory standards and permitting process provide for control of the chemically hazardous waste components. If EPA pursues rulemaking for the disposal of LAMW, we would focus on the controls necessary to ensure protective disposal of the radioactive component of the waste. We do not propose to change, either directly or indirectly, any of the RCRA provisions regulating the disposal of the chemically hazardous components of the waste. For the radioactive component of the waste, limits on the concentration of radiological waste that can be disposed of in a RCRA Subtitle C landfill may be the most straightforward method to use. These limits would be protective of the public health and would take into account the waste forms derived from the RCRA treatment standards and the design and performance of engineered barriers associated with such landfills.

1. Assess Characteristics of LAMW

The characteristics of low-activity mixed waste are important factors in determining whether a given disposal concept will be appropriate. By ''characteristics'' we mean the properties that will influence our technical analysis of LAMW disposal, because they affect the way the waste will behave in a Subtitle C disposal cell and potential radiation exposure to people. Properties of interest will include physical form and chemical composition of the wastes, and radionuclide content (specific radionuclides and their concentrations).

There is limited information available on mixed waste, particularly when compared to waste that is only low-level radioactive or RCRA hazardous. The most comprehensive survey of commercial mixed waste was conducted by NRC and EPA in 1992 (''National Profile on Commercially Generated Low-Level Radioactive Mixed Waste,'' NUREG/CR–5938). A summary of this survey is available at *http://www.epa.gov/radiation/mixed-waste/nat-prof.htm.* NRC indicated that, based on 1990 practices, commercial facilities generated about 3,950 cubic meters of mixed waste annually and held another 2,120 cubic meters in storage. The profile divides mixed waste properties and generation into five categories: medical facilities, academic institutions, government institutions, industrial facilities, and nuclear power plants. For various reasons, such as improved waste management practices and information collected by a few States, we believe the volumes of mixed waste being generated today may be significantly lower than those described in NRC's profile. For example, when developing our mixed waste rule of May 2001, our discussions with mixed waste generators suggested that the industry has recognized the limited progress in developing mixed waste treatment and disposal capacity and taken steps to reduce mixed waste generation in order to reduce the associated financial and regulatory burden.

Mixed waste (and therefore LAMW) is also generated by DOE. In fact, DOE has a legacy of environmental and process wastes requiring disposal and significant volumes are expected in the future as DOE sites undergo continued cleanup. As discussed in more detail later (see section II.J), DOE has indicated that tens of thousands of cubic meters of low-level radioactive waste that is mixed waste (MLLW) may be considered for disposal in commercial disposal facilities. Some fraction of this waste may have concentrations low enough to qualify as LAMW. The approach presented in this ANPR may also facilitate the cleanup of contaminated DOE sites in a protective, expedited, and cost-effective manner. We request comment on the application of a rulemaking based on this approach to DOE LAMW.

We encourage mixed waste generators to give us their perspective on the current status of mixed waste generation, storage, and disposal. In particular, we would like to know whether generators believe the 1992 EPA/NRC profile accurately describes the state of mixed waste generation today and how their mixed waste experience compares to that profile. Further, since an approach using radionuclide concentration limits to define LAMW for disposal at Subtitle C facilities may be the most workable, we would like generators to tell us which radionuclides are of most concern to them and the concentrations that would address a significant portion of their waste (*e.g.*, what concentration of a particular radionuclide is found in 25%, 50%, 75% of a generator's waste).

2. Assess Alternative Disposal Methods

Because we are focusing on simplifying disposal of LAMW, we must assess the suitability of land disposal methods that have features that could contribute to containment and isolation of low concentrations of radionuclides or treated hazardous constituents. Disposal facilities meeting this description would include:

- Low-level radioactive waste facilities licensed under 10 CFR part 61;
- Hazardous waste disposal facilities permitted under RCRA Subtitle C;
- Uranium mill tailings facilities operating under 10 CFR part 40; and
- Solid waste disposal facilities permitted under RCRA Subtitle D.

Today's ANPR focuses on hazardous waste facilities permitted under RCRA Subtitle C. We do not see a need to address low-level waste facilities, which are licensed with conditions on acceptable radionuclides and concentrations (which may vary for each licensed facility). Further, the rule we issued in 2001 at 40 CFR part 266, subpart N established conditions under which mixed waste could be sent to an NRC or Agreement State licensed low-level waste facility without requiring a RCRA permit. Similarly, while NRC has explored the possibility of allowing mill tailings facilities to accept RCRA hazardous and low-level radioactive waste, those facilities are not generally able to accept either without site-specific licensing. Finally, at this time, we do not expect to extend our disposal concept to RCRA Subtitle D (non-hazardous solid waste) landfills. However, the most recent EPA standards for such facilities (40 CFR part 258) require them to have engineered features that are similar in many ways to Subtitle C facilities. Further, our recent Hazardous Waste Identification Rule (HWIR) effort was intended to identify levels at which hazardous constituents pose a sufficiently low risk that they may be sent to Subtitle D facilities. (*See* 66 FR 27266, May 16, 2001.) We also note that NRC, in collaboration with the State of Michigan, has recently concluded that certain very low-activity wastes from the decommissioning of the Big Rock Point nuclear facility may be sent to a

Subtitle D landfill. (*See* 66 FR 63567–63568, December 7, 2001.) Other States have also determined that Subtitle D facilities may offer sufficient protection for certain types of radioactive material.[2] Therefore, we request comment on the suitability of Subtitle D facilities for low concentrations of radionuclides, under what conditions such disposal would be appropriate, and how comparable Subtitle D and Subtitle C facilities should be considered. We also request comment on the suitability of other types of disposal facilities not mentioned above.

a. RCRA Subtitle C Land Disposal. The design requirements for RCRA Subtitle C hazardous waste landfills include engineered barriers (*e.g.*, liners, see 40 CFR part 264, subpart N) while the hazardous waste itself must be treated to meet the land disposal restriction (LDRs) requirements. (*See* 40 CFR part 268.) Determining when disposal of LAMW at Subtitle C landfills is appropriate could involve deriving limiting radionuclide concentrations in the waste through modeling the performance of these disposal cells. We would consider the effectiveness of the RCRA-permitted landfill disposal cells under a variety of performance and release scenarios. These performance scenarios would take these design and waste treatment requirements into account and would anticipate the range of site-specific conditions at disposal sites that may occur in practice. The scenarios could assess performance of the RCRA Subtitle C design with respect to ground-water contamination under various climatic and hydrogeological conditions.

Scenarios could also evaluate worker exposure situations, including both the worker at the disposal site and the transportation worker. RCRA facilities are highly regulated and implement measures to protect workers against associated hazards. The personal protective equipment provided to RCRA workers might be expected to offer some protection against radiological constituents. Presuming low concentrations of radionuclides (which we would expect would keep exposures well below those allowable for workers at AEA-licensed disposal facilities), these workers might not need to be considered as occupational workers for the purposes of a radiation protection program under NRC regulations. Indeed, if the benchmark for exposure is low enough, from a radiological perspective, these workers would be more like members of the general public in the exposures they would be likely to receive (requirements related to RCRA hazardous waste would still apply). Other scenarios could also be considered as appropriate to assure the protection of the public health and the environment. Consequently, this approach would establish concentration limits appropriate for RCRA Subtitle C landfills accepting LAMW without requiring site-specific performance assessments. As a point of reference, consistent with the concept of LAMW (and ''low-activity'' waste in general), radionuclide concentration limits would not exceed the values NRC has established for Class A radioactive waste, as described in 10 CFR 61.55. (*See* 47 FR 57473, December 27, 1982.) See section II.D for a more detailed discussion of our concept for modeling.

b. Establish a Risk or Dose Basis for Allowable Concentrations. The basic modeling scenarios provide a method for identifying appropriate risk-or dose-based concentration limits on radionuclides in LAMW.[3] However, we still must consider the appropriate level of risk or dose on which the concentrations would be based. We are considering a number of factors in selecting an appropriate level, including other risk management decisions for radiation protection. In this regard, we are also working with NRC to understand how risk considerations will be incorporated into NRC's selection of a regulatory approach. We give more detail on these factors in section II.D.4.

3. Coordination With the Nuclear Regulatory Commission

Because a significant purpose of our proposed approach is to address low-activity mixed waste generated by NRC licensees, we and NRC will work closely together in modifying the existing regulatory structure to encourage more flexibility in LAMW disposal. The lack of facilities to treat and dispose of mixed waste has been the subject of Congressional hearings and EPA and NRC were encouraged to devote resources to develop a strategy to address these issues.[4] Concern was also expressed to the Council on Environmental Quality about this problem, which ''has persisted for over 11 years [with] no resolution in sight.''[5] The Council was asked what action was being taken to create alternatives for dealing with these waste streams.[6] We and NRC have worked together in the past to develop guidance and regulatory solutions for certain broad mixed waste issues.[7]

In that vein, EPA and NRC view the disposal of LAMW in a Subtitle C RCRA landfill as a viable approach deserving further examination through a public notice and comment process. EPA and NRC believe this approach has the potential to offer needed flexibility in the regulation of mixed waste and be fully protective of the public health and the environment. This approach would also be consistent with actions taken by both agencies to address specific situations. Note that the NRC, in consultation with us, has issued guidance such that, under certain conditions, radioactively contaminated electric arc furnace dust containing cesium-137 below specified levels—the result of accidental melting of sealed sources by steel mills—appropriately may be disposed of in commercially operated RCRA hazardous waste facilities (62 FR 13176, March 19, 1997).

We anticipate that implementing the disposal option discussed in today's action for all low-activity radioactive waste, including those waste streams discussed in section III, will require regulatory action by both agencies (although our respective responsibilities clearly vary for the different waste streams). We invite commenters to provide their perspective on the appropriate roles of the two agencies in developing regulatory standards and implementing them for waste generators

[2] The State of Texas allows certain radioactive material with half-life less than 300 days to be disposed in solid waste landfills. (See Texas Administrative Code, Title 25, Chapter 289, Section 202(fff).) In 2001, the Radiation Focus Group of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) stated ''Currently, prohibitions against all radioactive materials are too broad'' and that ''the list of radioactive materials that should be excluded from landfills * * * should include only wastes that are long-lived, and/or soluble, or otherwise pose a significant hazard.'' (''Detection and Response to Radioactive Materials at Municipal Solid Waste Landfills,'' Final Report, July 18, 2001.)

[3] A ''risk-based'' limit would consider the probability that a person being exposed to radiation would develop a health effect. A ''dose-based'' limit would consider the amount of radiation exposure that person could receive. The correlation between risk and dose is not the same for every radionuclide.

[4] Hearing Before the Subcommittee on Energy and Power of the Committee on Commerce, House of Representatives, 104th Cong., 2d Sess., Sept. 5, 1996, Serial Number 104–114.

[5] Hearing Before the Subcommittee on Oversight and Investigations, of the Committee on Energy and Natural Resources, United States Senate, 104th Cong., 2d Sess., Sept. 26, 1996, Serial Number 104–775, at 71.

[6] *Id.*

[7] EPA and NRC have issued joint guidance on mixed waste testing (''Joint EPA/NRC Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste,'' 62 FR 62079, November 20, 1997) and disposal (''NRC/EPA Siting Guidelines for Disposal of LLMW,'' OSWER Directive 9480.00–14, June 1987; ''Joint NRC/EPA Guidance on a Conceptual Design Approach for Commercial LLMW Disposal Facilities,'' OSWER Directive 9487.00–8, August 3, 1987). These documents are available at *http://www.epa.gov/radiation/mixed-waste*.

and disposal facilities, including the appropriate level of Federal and/or State oversight. What regulatory arrangement, including division of responsibilities between EPA and NRC, would be most likely to facilitate the safe management and disposal of these wastes? We would also welcome suggestions as to the most effective ways to minimize the effects of dual regulation.

In our discussions, NRC has identified several regulatory options that it might apply to LAMW. We discuss these potential NRC regulatory approaches to LAMW in section II.F, and have included some questions to elicit public comment on those approaches. However, NRC will discuss issues specific to NRC's regulatory system in greater detail as it proceeds through its own rulemaking process. Our action today focuses more on technical and policy questions surrounding the use of RCRA–C technology and regulatory framework for disposal of LAMW, the applicability of the RCRA–C technology to other low-activity radioactive wastes, and non-regulatory approaches that might prove effective in managing and disposing of low-activity wastes. We encourage commenters to respond to all questions in today's action.

B. Why Is There a Need To Simplify Disposal of LAMW?

1. Dual Regulatory Structure

Mixed waste is regulated under both RCRA and the AEA. The need to comply with two separate regulatory systems, each of which is targeted to a different component of the waste, creates a certain regulatory and economic burden on mixed waste generators. While many of the requirements of the two systems have similar purposes (*e.g.*, inspections), they can have the effect of creating two distinct regulatory compliance infrastructures. Generators (as well as treatment and disposal facilities) must achieve compliance with both systems. In some cases, these requirements may appear to be duplicative.

Approximately 3000 small volume generators store mixed wastes, in part because disposal options are extremely limited. Some estimates are that the number of individual sites storing mixed waste could be significantly higher, though there is greater uncertainty in these estimates. The lack of disposal options for these generators causes increased management costs. It also can result in mishandling and perhaps illegal dumping of the waste. Some mixed waste has been in storage for over a decade. These concerns are not limited to small generators. The EPA rule discussed in section II.B.2 was largely driven by power companies' concern over dual regulation of mixed waste. We believe, in general, that treatment and permanent disposal of waste, when available, is preferable to storage.

Also, we are concerned that the high costs and difficulty of disposing of mixed waste will cause doctors, hospitals, and diagnostic laboratories to suspend certain procedures, which could result in the provision of less than optimum health care.[8] There are reports that the inability to store and dispose of radioactive waste has caused researchers to avoid scientific procedures that are known to be effective and to develop less effective alternatives.[9] We also are concerned that such problems indirectly may be hampering medical research.

We believe it is possible to alleviate the problem if more of the facilities that can accommodate hazardous waste safely were allowed, under certain conditions, to dispose of LAMW. Of the commercial facilities currently permitted to dispose of hazardous waste under RCRA, only one is also licensed to dispose of AEA radioactive waste (and mixed waste). (This facility and one other that we are aware of that has applied for a license to dispose of AEA radioactive waste are special cases, as their original plans involved accepting radioactive waste.) This situation may be due, in part, to the additional burden faced by the RCRA disposal facility operators in applying for a site-specific license under 10 CFR part 61 or its equivalent to establish a full-fledged low-level radioactive waste (LLRW) disposal facility. Both 10 CFR part 61 and RCRA Subtitle C describe fairly lengthy, data intensive, and costly processes for regulatory approval. The somewhat different focus of the two systems (RCRA as ''technology based'', part 61 as ''performance based'') may also serve to limit the number of facilities willing to demonstrate compliance under both regulatory systems. (See section II.C for more detail on the licensing-permitting issue.) A few commercial Subtitle C landfills have accepted non-AEA radioactive waste with the approval of State authorities, which supports our belief that, with the proper controls, the RCRA–C technology can provide protective disposal of certain types of radioactive material. Issues associated with non-AEA radioactive wastes are discussed in section III.

We asserted RCRA authority over the hazardous portion of mixed waste in the mid-1980s; however, section 1006 of RCRA states that the AEA takes precedence over RCRA in cases where the regulatory requirements are inconsistent. Because the approach we are considering would rely on RCRA Subtitle C landfill technology, and because low-activity mixed waste would have relatively low concentrations of radionuclides, our approach would permit the disposal of LAMW if it met RCRA–C regulations and practices. This implies that the risks to workers, the public, and the environment (including ground water) presented by the radioactive portion of LAMW would be effectively minimized considering the controls already in place at the RCRA–C landfills. Waste generators would also bear responsibility for ensuring that their waste met conditions for disposal as low-activity mixed waste.

This approach would take into account the practicalities of implementing LAMW disposal at RCRA-permitted hazardous waste landfills, rather than transforming them into more AEA-like facilities. We believe that this will introduce sufficient flexibility as to allow LAMW generators to take advantage of additional disposal options. Similarly, the number of commercial facilities currently permitted under RCRA to accept hazardous waste (roughly 20) is significantly higher than the number licensed to accept low-level waste (3) or mixed waste (1), offering the prospect of greater competition and disposal capacity. Though this comparison is instructive, we do not want to limit our focus to commercial disposal facilities. A significant number of companies have been issued permits for their own ''captive'' or privately-owned hazardous waste disposal facilities, which typically accept waste only from generators owned by or affiliated with the landfill operator. It is conceivable that mixed waste generators might be among those with access to such facilities. These facilities must meet the same RCRA permitting requirements as commercial facilities and therefore, this approach should be equally appropriate for the receipt of LAMW. We request comment on whether we should consider only a subset (*i.e.*, only the commercial or private sector) of the RCRA–C universe in our analyses. On a related topic, should RCRA landfills operated by DOE on its own sites be considered within the scope of this approach?

[8] Kaye, Gordon J, ''The Crisis in LLRW Disposal Short- and Long Term Effects on the Biomedical Community,'' Newsletter for Appalachian Compact Users of Radioactive Isotopes, June 1991.

[9] Isaac, Peter G, *et al.*, ''Nonradioactive Probes,'' Molecular Biology, p 259–160, vol. 3, June 1995.

2. Recent EPA Mixed Waste Actions

As described above, on May 16, 2001, we promulgated regulations related to the storage, treatment, transportation, and disposal of mixed low-level radioactive waste (subpart N of 40 CFR part 266). These regulations describe conditions under which MLLW can be exempted from certain RCRA hazardous waste requirements. In particular, a generator of MLLW may store and treat the waste at the generator's facility without obtaining a RCRA permit (required for hazardous waste treatment, disposal, and on-site storage beyond 90 days), as long as the storage and treatment take place in tanks or containers and conform to the generator's AEA license conditions. Similarly, transportation to an AEA-licensed low-level radioactive waste disposal facility, and subsequent disposal, may also take place solely according to AEA requirements. However, eligible MLLW must still meet the RCRA land disposal treatment standards prior to transportation for disposal at a licensed low-level waste disposal facility.

We believe our conceptual approach to disposal of low-activity mixed waste is complementary to the regulations we promulgated in subpart N. We believe that a significant proportion of MLLW could qualify as low-activity mixed waste (just as most low-level waste is in the lowest-activity class), depending on where the technical analyses indicate the limits should be set. The approach we are outlining today would also significantly increase disposal options, if fully implemented. Compared to the three operating low-level radioactive waste disposal facilities, there are roughly twenty commercial RCRA Subtitle C disposal facilities operating today, with many more that take waste from only a limited number of generators.

The approach we took in promulgating the subpart N disposal requirements relied on a comparison of the RCRA and AEA requirements for disposal. In that context, and recognizing that RCRA waste meeting the treatment standards for land disposal would likely be significantly lower in risk, we determined that AEA disposal requirements offered sufficient protectiveness for the hazardous constituents in MLLW. Our approach to establishing disposal standards for low-activity mixed waste is similar in concept. For example, our approach would consider the effects of waste form for the treated LAMW and containerization in minimizing the availability of radionuclides in the waste for release in the presence of water. However, our approach will rely on modeling to determine when the risk to workers and the public from disposal of radionuclides is acceptably low. The LAMW concentration limits developed under this approach will be analogous to the RCRA concentration-based treatment standards that reduce the toxicity and mobility of hazardous constituents in the waste. Additional measures that support and build public confidence in this determination, such as ground-water monitoring for radionuclides, may be advisable.

There will be unavoidable overlap of the mixed waste eligible for disposal under the two rules. Our subpart N regulations cover a broader spectrum of MLLW, while we expect the LAMW concept to address only the lower-activity portion of that MLLW spectrum. Generators with waste eligible under both rules may make their disposal choice based on cost, access to a disposal facility, and regulatory constraints.

C. How Would the RCRA Regulatory Framework Support a Viable Disposal Concept?

We propose to rely to a large extent on the protections offered by the RCRA hazardous waste disposal facilities for disposal of low-activity mixed waste. We believe that the RCRA Subtitle C requirements provide a uniform level of waste containment and isolation technology that warrants confidence in their ability to address low concentrations of radionuclides; although RCRA does not regulate on the basis of radioactivity, there is no general prohibition on disposal of material not regulated as hazardous in a hazardous waste facility, and some RCRA facilities are permitted to accept certain types of TENORM waste. In addition, requirements related to hazardous waste characteristics have evolved over the life of the Subtitle C program to the point that they are tightly controlled through application of treatment standards. Below we discuss several points that we believe provide strong support for the LAMW disposal approach.

1. Technological Basis for Disposal (RCRA Hazardous Waste Landfill Criteria)

To assess the protectiveness of LAMW disposal at RCRA–C facilities, we first need to understand how the disposal cell itself will contribute to the isolation of radionuclides. It is recognized that RCRA and AEA employ different regulatory philosophies. RCRA has explicit engineering and construction criteria for Subtitle C landfills. Therefore, any permitted RCRA–C facility is expected to meet these basic criteria and they can be accounted for in the technical analyses. In contrast, as discussed further in section II.C.4, AEA low-level waste facilities in 10 CFR part 61 must meet certain performance objectives to be licensed. Thus the AEA approach allows for some variation among AEA facilities, depending upon factors such as climate and site geology. This provides flexibility in facility design in that it can be tailored to the hazard of the waste. Ultimately, the purpose of both systems is to contain and isolate the waste in order to protect public health and the environment.

We believe RCRA's uniformity of design, and the specific engineering features required, provide assurance that RCRA–C facilities can limit contact of waste with water (and subsequent leachate generation) and should allow disposal of LAMW containing low concentrations of radionuclides. The RCRA regulations describing landfill attributes are located in 40 CFR part 264, subpart N. They require, among other things, that a disposal facility have:

- A cap on the disposal cell that minimizes infiltration of liquids, promotes drainage, minimizes erosion, accommodates settling and subsidence, and has permeability no greater than that of the disposal cell liner system or natural subsoils;
- A liner system beneath the disposal cell constructed of materials of specified thickness, hydraulic conductivity, physical strength, and chemical resistance;
- A leachate collection and removal system capable of limiting leachate depth above the liner to 30 cm; and
- A leak detection system constructed with a specific slope and materials of a certain thickness, hydraulic conductivity, physical strength, and chemical resistance.

2. RCRA Treatment Standards

Besides having specific requirements for disposal cell construction, RCRA also requires that hazardous waste be treated prior to land disposal. This treatment may serve two purposes: First, it can reduce the concentration of hazardous constituents in the waste, which also reduces the associated risk; second, it may change the physical form of the waste, which can change the volume of the waste, make the waste easier to handle, reduce the likelihood of releasing hazardous constituents from the waste, or reduce the likelihood that the waste itself will migrate out of the disposal cell (*e.g.*, as a liquid or

leachate) and reach ground water. (By contrast, NRC requirements address waste characteristics, but NRC does not require specific treatment methods for waste prior to disposal. However, low-level radioactive waste is generally compacted, which reduces volume and increases stability but also increases radionuclide concentrations on a per unit volume basis. In addition, liquids and chelating agents must be minimized or otherwise managed to limit their impact on facility performance.)

The RCRA Universal Treatment Standards (UTS) are located in 40 CFR part 268. Most are in the form of concentration limits of the respective hazardous constituents, but some are in the form of specified treatment technology (particularly in the case of hard-to-treat wastes). The UTS are based on the level of reduction that can be achieved by available technology, not on risk reduction. However, by reducing the concentration of toxic constituents, the practical effect is some reduction in risk. We would appreciate comments on the need for measures, such as waste treatment to a specific waste form, that would help ensure that radionuclide concentrations established under the approach outlined today remain protective when implemented.

We expect this approach to require that low-activity mixed waste comply with the RCRA UTS before allowing disposal at RCRA–C facilities, in keeping with existing restrictions. To the extent that treatment involves some kind of waste stabilization or solidification, we would consider this advantageous to keeping radionuclides immobilized in the disposal cell. We ask readers whether they believe there are situations in which compliance with the UTS may be unnecessary or inadvisable for wastes containing radionuclides. We request comment on the need to require a certain waste form for LAMW and the desirability of having standards (*e.g.*, concentrations) that are dependent on waste form. We also request comment on whether a rule should explicitly require segregating treated LAMW meeting the UTS from untreated hazardous waste (waste disposed of before treatment standards were required). This would limit potential interactions with chemicals that could influence the ability of radionuclides to move in the environment. We believe this is probably not necessary, as disposal cells that were open prior to the treatment requirements are likely to have been closed for some time.

3. RCRA Disposal Facility Operating Standards

RCRA is also explicit about how the facility must approach operational functions, both while the facility is operating and during the closure and post-closure phases. In particular, facility operators must follow specific procedures regarding (*see* 40 CFR part 264):

- Inspections—the facility operator must inspect equipment and procedures in accordance with a written schedule (including inspecting the installation of the liner and leachate collection system), must inspect the operation of the landfill after storms, and must inspect the leachate collection system regularly during operation and post-closure;
- Recordkeeping—the facility operator must maintain inspection records for at least three years and maintain records detailing the location, dimensions, and contents of disposal cells;
- Monitoring/corrective action—the facility operator must conduct a ground-water monitoring program and implement corrective action when a hazardous constituent is detected in ground water at concentrations that exceed those listed in the facility's permit;
- Closure/post-closure—the facility operator must install a permanent cap on the disposal cell that complies with engineering specifications, must have an approved closure plan that minimizes the need for further maintenance, must perform maintenance that becomes necessary throughout the post-closure period, and must submit a survey plat showing the locations and contents of disposal cells.

4. How Does AEA Licensing Compare to RCRA Permitting?

Both the NRC and EPA have designed their disposal regulations with the intent of isolating waste from the environment to minimize exposures from the radiological or chemical constituents (in this document, we are focusing on the NRC requirements for LLRW disposal under 10 CFR part 61). There are a number of broad similarities between the two regulatory approaches that could translate into ''simplified'' AEA oversight. For example, both the AEA and RCRA:

- Accept and regulate near-surface disposal as a means to contain and isolate waste;
- Include measures to limit infiltration into the disposal cell (such as a cover/cap);
- Require site monitoring during operations;
- Require continued maintenance after facility closure; and
- Recognize that there are certain site characteristics to be avoided (such as floodplains and other geologic hazards).

However, there are also some noteworthy differences in the technical requirements for waste disposal. Some of these differences exist because of the way the regulations are written and implemented. RCRA regulations are more prescriptive and design-based than are the NRC requirements. Although both systems have basic requirements for site selection, RCRA does not require a landfill seeking a hazardous waste disposal permit to conduct performance assessments (site-specific modeling) to assess how waste disposal at the facility will protect human health and the environment after facility closure. Instead, by requiring a uniform (minimum) level of technology designed to provide containment and prevent releases, RCRA places the burden on the technology to perform as expected and thereby protect the public and environment. For example, RCRA requires that a disposal cell have a double liner constructed of certain materials and a leachate collection system capable of performing to certain specifications. RCRA regulations say, in effect, ''this level of technology is protective.'' An important point is that, under RCRA, leachate from a hazardous waste disposal cell is hazardous waste, and must be collected and treated accordingly. Similarly, leachate containing radionuclides could be newly generated mixed waste and be treated accordingly. We request comment on how we should address radionuclides in the LAMW leachate, particularly if the LAMW has been disposed of under some exemption from NRC requirements.

On the other hand, NRC, in its regulations under the AEA, focuses more on standards of performance, rather than on construction specifications. The NRC has established a maximum dose level to the public; however, the burden is on the facility operator to satisfy the licensing authority that the facility, as sited and constructed, will not allow that dose to be exceeded. Thus, the NRC regulations require a detailed, site-specific operational and post-closure performance assessment to show that the facility will perform adequately. NRC regulations say, in effect, ''show that the level of technology you select, combined with the characteristics of the site you have selected, will meet this level of protection.'' License conditions, often including monitoring facility performance, are then established to

ensure that the level of protection is achieved.

The nature of the waste can also affect the time needed for the hazard to diminish. RCRA establishes a minimum period of 30 years for facility maintenance and monitoring after closure of the disposal cell (with extensions as necessary to protect human health and the environment). NRC assumes a minimum period of 100 years for active maintenance, with control of the site continuing for an indefinite period before license termination because of the variety and concentration of radionuclides that could be disposed at such a site. Performance assessments conducted to meet 10 CFR part 61 licensing requirements include projections well beyond both the 30- and 100-year active institutional control periods.

The environment in the disposal cell (*e.g.*, pH, temperature, moisture) can affect the decomposition of many hazardous constituents (primarily organics, as many heavy metals persist essentially forever). Radionuclides, however, break down more predictably than do hazardous constituents. A radionuclide remains radioactive, and will take the same time to decay, regardless of its physical and chemical environment. Because some radionuclides take hundreds or thousands of years to decay, under the AEA, facilities are not expected to maintain perfect containment for these long periods until the waste is no longer radioactive. In fact, evaluations of AEA facilities typically include situations in which the disposal system does not perform as well as expected, with resulting limited releases. These projected limited releases become the basis for performance assessments used to make compliance or licensing decisions. Under NRC regulation, the combination of engineered barriers, waste form requirements, and natural site characteristics are evaluated to assure that the concentration of radionuclides reaching the accessible environment does not exceed regulatory limits. Although AEA regulatory practice focuses on preventing infiltration, if the cell cover degrades it is preferable for infiltrating water to move quickly out of the disposal cell in order to minimize contact time with the waste (avoiding a ''bathtub'' situation). Thus, this approach of recognizing the potential for limited releases delays and spreads out the releases over time and minimizes peak doses. In practice, many long-lived radionuclides will not move with ground water, but will remain within the general area of disposal because of their chemical characteristics. (Assumptions and knowledge about the mobility of individual elements in various environments influence the selection of modeling parameters. Typically, conservatism is introduced into performance assessments to help account for uncertainties in long-term modeling. It should also be noted that the behavior of a particular element in the environment will be essentially the same whether it is radioactive or not.) In this vein, NRC regulations expect the evaluation of a potential disposal site for ''at least a 500 year time frame'' while also considering the ''indefinite future.''[10]

There are several fundamental issues to be considered in determining the feasibility of an approach involving simplified NRC oversight for RCRA-C facilities, particularly where NRC requirements are more extensive than RCRA requirements. Areas of overlap in which one regulatory regime would take primacy also are important. These issues include:

- *Post-Closure Care:* Should operators be required to maintain the facility for periods longer than the minimum 30 years required by RCRA? (RCRA has discretion to extend this period, and some States have done so.) What about for 100 years, with the expectation of longer site control, as NRC requires?
- *Land Ownership:* RCRA allows private ownership of disposal sites, with the possibility of future sale. NRC licensing under 10 CFR part 61 is contingent on eventual ownership of the site by a Federal or State government entity.
- *Financial Assurance:* AEA disposal facilities generally put up a higher initial financial assurance than RCRA facilities to account for longer periods of care.
- *Ground-Water Monitoring and Corrective Action:* If there are releases of hazardous constituents, RCRA authorizes corrective action (corrective action for hazardous constituents might be effective for AEA materials combined with the hazardous constituents). RCRA regulations have specific requirements for ground-water monitoring of hazardous constituents (40 CFR 264.92–94), which are incorporated into the facility permit. While NRC regulations have general requirements for site monitoring ''capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary'' (10 CFR 61.53), they do not contain separate ground-water standards. Detailed monitoring requirements may be developed in the facility license.

This ANPR addresses the possibility of alternate disposal methods for LARW. We will work with NRC to develop appropriate concentration limits that are protective of the general public and that minimize the need for additional NRC requirements. However, NRC may decide that additional requirements on generators or disposal facilities are necessary for NRC to meet its obligations under the AEA. We request comment on these issues.

D. What Methods Could Be Used To Assess the Risk of Disposing of LAMW?

1. Modeling as a Basis for Establishing Risk or Dose Basis

Mathematical modeling is a fundamental tool of radioactive waste management. It assists regulators in assessing expected releases (and subsequent doses) to the environment from disposal facilities over periods of hundreds to thousands of years. However, these projections over time should not be viewed as firm predictions. Instead, they can give regulators and the public confidence that certain limits will not be exceeded. Actual ''proof'' of performance would involve active measures such as facility monitoring.

2. Comparison of Risks From Radioactive and Hazardous Waste Disposal

The public may not have a good understanding of the relative risks from radiation and hazardous waste. It is probably true that many people would consider radioactive waste to be more of a danger than hazardous waste. It is important that the public be informed of the risks involved in our approach and be satisfied that those risks are managed appropriately. We have included a general discussion of risks from both types of waste below.

The risk from radioactive material depends on the type of radiation emitted and the path(s) of exposure. Gamma radiation is most significant for external exposures. Alpha emissions are of most concern for inhalation. NRC requirements for land disposal typically put limits on radiation doses to the public. Dose can be converted to risk, although risk can also be calculated directly from exposures; the results tend to differ for the two methods, and dose itself can be expressed in several ways that may not be equivalent (a more detailed discussion of various dose standards is located in section II.D.5). As discussed above, facilities seeking an NRC radioactive waste disposal license

[10] 10 CFR 61.7(a).

must satisfy the licensing authority that they can meet these limits through long-term performance assessments. The performance assessment evaluates the projected inventory of radionuclides in the disposal cell at closure and models the movement of those radionuclides in the environment using site-specific conditions.

RCRA considers risk when deciding which wastes should be defined as hazardous. RCRA evaluates how individual constituents, when land disposed, will behave in the environment over long periods of time. Listed wastes (those designated by F, K, P, or U waste codes) automatically include substances that have a lifetime cancer risk of 10^{-4} or higher to a nearby receptor (*i.e.*, exposures to the contaminant would cause a fatal cancer to one person or more in a population of 10,000). RCRA lists substances with a lifetime cancer risk between 10^{-4} and 10^{-6} on a case-by-case basis. It does not list those substances with a lifetime cancer risk less than 10^{-6} (*i.e.*, fewer than one in 1,000,000). For non-cancer toxic effects, if the concentration of the constituent in leachate exceeds the drinking water treatment standard for that constituent (*i.e.*, the ''Hazard Quotient'' is greater than or equal to 1), the waste is listed as hazardous. Toxicity characteristic wastes (designated by the D waste code) are defined at the concentration that corresponds to a 10^{-5} lifetime fatal cancer risk. In determining whether to list a waste as hazardous, RCRA does not focus on individual site characteristics, but conducts generalized assessments that consider climatological and hydrogeological variations around the country along with how much of a particular waste is generated and how many sites across the country might accept such waste, and does not credit the engineered features required in the regulations (as we would expect to do for LAMW).

Since 1998, hazardous waste must meet the Universal Treatment Standards (UTS) in 40 CFR part 268 before being land disposed. The UTS are constituent-specific concentration or treatment technology standards that effectively reduce the toxicity, although the waste must still be disposed of as hazardous. Our recent Hazardous Waste Identification Rule (HWIR) effort is intended to establish risk-based constituent concentrations at which listed hazardous wastes could ''exit'' regulation under Subtitle C. They could then be disposed of as ''solid waste'' under Subtitle D.

In sum, both the NRC and RCRA approaches serve to limit the risk to the public from waste disposal. Although we plan to conduct modeling of the disposal cell (that may combine aspects of the site-specific and generalized approaches), we will also examine the NRC and RCRA disposal regulations to support the modeling efforts.

3. Modeling Scenarios

The modeling effort would have two aims. The first aim would be simply to assess the performance of the generic RCRA-C design in terms of long-term radionuclide containment. The second aim would be to derive limits for radionuclide concentrations in the wastes to be disposed of in such a facility. Both NRC and EPA will have to be satisfied with the modeling to successfully implement this approach. EPA's modeling approach is detailed below and will be coordinated with the NRC.

a. Situations to be Addressed. The initial step in a risk or dose assessment is to determine how a person might be exposed to the material in question. If there is no exposure, as for the period when waste is contained and isolated within an intact disposal cell, the risk or dose will be zero. There are four situations that could result in human exposures to the radionuclides in low-activity mixed waste:

- The gradual degradation of the disposal cell through expected natural processes, which results in radionuclide releases over long periods of time (100 years or more);
- Releases caused by ''off-normal'' events, such as unusually high precipitation over a period of years;
- Exposures to RCRA disposal facility workers handling LAMW; and
- Exposures caused by human activity that disrupts the disposal site.

These scenarios are discussed in more detail in the following sections. We request comment on the adequacy of these scenarios and whether there are others we should consider. We recognize that similar scenarios could be used to describe potential exposures to the hazardous constituents already handled at the facilities under consideration, and that such exposures may be of equal or greater risk than would be presented by radionuclides; however, our purpose in this discussion is to determine the best way to demonstrate that the RCRA technology is adequately protective for radionuclides.

b. Long-term Disposal Cell Performance. i. General Discussion. To model the long-term performance of the RCRA hazardous waste disposal cell, assumptions must be made about the initiation of failure of the cap and liner system to allow water to enter the cell, interact with the wastes, and exit the disposal cell to the surrounding area. Once released from the disposal cell, contaminated water would percolate downward through the unsaturated zone above the local water table, eventually reaching the water table and migrating laterally in the direction of ground-water flow toward a receptor at some distance from the disposal facility. For this conceptual model, the receptor is a person living close to the facility who receives doses from the use of contaminated ground water. Other pathways of exposure would include the surface transport of waste accidentally spilled during operation of the disposal facility.

With this simple conceptual model, potential releases from the disposal cell can be calculated for assumed waste concentrations by specifying the other parameters involved in contaminant transport calculations. Important factors for consideration in the modeling calculations include:

- Rainfall rates;
- Thickness of the unsaturated zone under the disposal cell;
- Distance from the disposal cell to the well supplying water to the receptor;
- Drinking water consumption rate from the contaminated well and amounts of contaminated food consumed;
- Ground-water flow rates;
- Effectiveness of the cap in controlling water infiltration and the liner in retarding contaminant movement;
- Radionuclide retardation effects (primarily sorption into the geologic media and solubility constraints); and
- Radioactive decay along the flow paths.

To test the performance of the disposal cells, we would model a wide range of site-specific conditions in arid and humid climatic settings as well as variations in hydrogeologic conditions, such as variations in the thickness of the unsaturated zone below the disposal facility and ground-water flow rates in the saturated zone. Variations in all these parameters will affect the exposures incurred by the receptor for the scenarios analyzed. We would expect to base our modeling on data available for actual sites in order to capture the variation in various site parameters. We could use the data for DOE sites, because they represent a wide range of climatic and hydrogeologic conditions across the nation, and because they are relatively well-characterized and a good data base of site-specific conditions is available for them. We also could use site data

from RCRA-C facilities across the nation; the most comprehensive approach would probably be to create a combined data set to ensure that the modeled sites reasonably address the range of potential waste disposal facilities subject to RCRA-C landfill requirements. We would expect to adopt a conservative approach to selecting model parameters, as described in more detail later. Additional sensitivity studies would be done to identify the variables that most prominently control disposal cell performance and exposures to the hypothetical receptor outside the facility.

We expect to address a variety of site characteristics and exposure scenarios in the analyses described below. These analyses will encompass a broad range of potential conditions from which waste concentrations could be derived for uniform waste acceptance criteria nationwide. It is possible that some hazardous waste landfills could dispose of waste containing higher concentrations of radionuclides than would be appropriate for the ''average'' facility while maintaining the appropriate level of protection for the public and environment. For example, waste acceptance criteria could be derived by explicitly examining site characteristics, such as annual precipitation levels. Alternatively, disposal facilities with unique features, such as very deep ground-water tables, may be able to safely contain wastes with higher radionuclide content than the levels defined in a broadly applicable standard. Therefore, we request comment on whether individual disposal facilities should be given the opportunity to demonstrate that they can accept waste with radionuclide concentrations that exceed those that would be established by such a standard.

The basic scenario to model would be an expected performance case, in which the disposal cell degrades over time and radionuclide releases from the bottom of the cell infiltrate the underlying unsaturated zone and move into the saturated zone. From that point, the ground-water flow in the saturated zone carries radionuclides laterally to a well supplying the water needs of a defined receptor (person) living near the former disposal cell. The modeling would allow us to calculate exposures to the receptor from direct ingestion of drinking water and ingestion of food produced using contaminated ground water from hypothetical wells. We could also examine the impact of volatile radionuclides, such as might be encountered during irrigation. These radionuclides can sometimes give significant exposures through inhalation. However, we would expect ingestion exposures from various ground-water uses to be much higher than those from inhalation of volatile radionuclides.

We believe that the modeling approach should be appropriately conservative. By ''conservative,'' we mean that we would select modeling parameters so that releases from the disposal cell are more likely to be over-estimated than under-estimated. This approach helps to account for uncertainty by incorporating an additional margin of safety. However, it would not be appropriate to be overly conservative. Focusing on ''worst case'' conditions leads to reliance on unrealistic modeling results. Major areas of conservatism could include:

- The distance from the disposal cell to the receptor well could be assumed to be short—
  - —Prevents expected dilution of the contamination plume with larger volumes of ''clean'' ground water
  - —Less radionuclide retardation by soils along ground-water flow path
  - —Institutional control over site may prevent a well close to the disposal cell
  - —Early detection of radionuclide release could trigger facility closure and corrective action
- Radionuclide retardation parameters could be selected for less retardation and faster transport
- Disposal facility cap and liner could be assumed to fail sooner than normally anticipated after facility closure
  - —Cap and liner designed to exceed RCRA 30-year post-closure monitoring period
  - —Assumption of failure introduces infiltration and flow through disposal cell earlier than normal, when radionuclide inventories are highest.

As stated above, a primary purpose of modeling the long-term performance of the RCRA–C disposal cell would be to derive radionuclide concentrations in wastes that would assure that exposures from any disposal cell releases would be at acceptably low levels to support a simpler NRC regulatory process for the disposal of low-activity radioactive waste at RCRA-permitted hazardous waste landfills. We expect that modeling will show that some radionuclides reach the receptor well within the modeling period. For these radionuclides, waste concentration limits would likely be calculated by simply scaling the exposures calculated in the modeling exercise to the acceptable level of protection (we request comment on the appropriate level of protection to consider for this approach in section II.D.5). These limits would function as waste concentration limits for implementing the RCRA–C disposal option. Wastes with radionuclide concentrations higher than established in the rule would not be eligible for disposal in the RCRA–C disposal cell, although consideration could be given to including in the rule specific additional conditions that would permit such disposal (essentially, a ''graded'' approach in which more extensive radiation protection measures are applied as radionuclide concentrations increase). Another alternative would be to allow a disposal facility to petition to have higher waste concentration limits based upon the results of site-specific performance assessments. However, this would make it more difficult for NRC to pursue a simplified regulatory approach.

ii. ''Wet'' and ''Dry'' Sites. We believe that using a conservative modeling approach will incorporate a significant margin of safety sufficient to compensate for any uncertainties in the eventual performance of the RCRA–C disposal design. Assessing just how significant the margin of safety will be depends on how waste radionuclide concentrations will be applied to disposal facilities. We see two basic approaches, discussed generally below. We request comment on these and other potential approaches.

The first option (''Option 1'') would be to have all disposal facilities use the same waste concentration limits regardless of the projected disposal cell performance. Experience tells us we would expect to see significant variation in performance under the wide range of climatic and hydrogeologic conditions that we model. Essentially, Option 1 imposes the concentration limits determined for the worst case disposal cell we would model on all potential disposal sites, regardless of the relative merits of any particular site conditions. Option 1 would thus add an additional level of conservatism to an already conservative approach. This approach has the potential to significantly decrease the usefulness of the rule by placing additional limitations on the waste streams addressed by our proposal (*i.e.*, waste concentration limits based on a ''worst case'' situation). An advantage of Option 1 is that it is simple to implement, in the sense that no variations in the waste concentration limits would be permitted.

Option 2 would allow different concentration limits to be used depending on the projected performance of the disposal facility. For example,

performance modeling might indicate that sites with lower rainfall and deeper ground-water tables perform significantly better with respect to limiting off-site doses from radionuclides that can be transported away from the disposal cells by infiltrating ground water. Such a result would not be surprising, simply because the travel time for radionuclides to produce an off-site dose to individuals is likely to be longer if infiltration is less and it takes longer to reach ground water in the first place. For these ''dry'' sites, higher waste concentrations for those radionuclides readily transported with ground water could apply to the disposal facility while still meeting the same exposure limits as the ''wet'' sites (with higher rainfall and shallower ground-water tables). For both options, the exposure limits which underlie the rule would be the same. If site conditions leading to superior overall performance were clearly seen in the modeling, Option 2 would take advantage of that projected performance, whereas Option 1 would not.

Should Option 2 prove preferable, we would then face the challenge of defining desirable site conditions that would allow disposal of waste with higher radionuclide concentrations in some subset of RCRA–C facilities. In general, annual precipitation is an important parameter (and is also one for which data can be obtained easily), but often varies too much to be used by itself to characterize site behavior. Experience in modeling the movement of radionuclides through the environment, as well as empirical observation, indicate that the depth from the bottom of the disposal cell to the ground water is another important parameter that also is measured easily. Although depth to ground water also can vary (*e.g.*, with seasonal variation in precipitation), we believe that it could be possible to use precipitation and depth to ground water, in combination with other parameters, to distinguish sites that can accept higher concentrations of some radionuclides without presenting undue hazards to human health and the environment. This approach essentially favors sites that have long travel times from the disposal cell to the ground-water table (generally through some combination of deep ground water and soil types that tend to slow the movement of infiltrating water) and limited infiltration of water through the cap to the waste layer (generally through a combination of low precipitation and high evapotranspiration).

We recognize that there are many other parameters that affect radionuclide transport. However, it may be difficult to obtain the necessary information, and necessarily more complex to devise a method to combine the parameters. We encourage public comment on the concept of distinguishing among sites, as well as ideas on methods to make that distinction. As an initial point of review for interested commenters, we have examined this issue for relatively small Subtitle D facilities in remote locations. Because many of these facilities are in communities with limited resources, we determined that ground-water monitoring could be limited if annual precipitation (including evapotranspiration) was less than roughly 25 inches, as long as there is no evidence of ground-water contamination. We also developed a screening tool for Subtitle D facilities seeking no-migration variances that considers precipitation, depth to ground water, net infiltration, evapotranspiration potential, and permeability of the unsaturated zone. This approach implicitly estimates travel time from the disposal cell to the ground water. See ''Preparing No-Migration Demonstrations for Municipal Solid Waste Disposal Facilities: A Screening Tool,'' EPA530–R–99–008, February 1999 (available at *http://www.epa.gov/osw*).

We are aware that the approach embodied in Option 2 is somewhat different from that taken by existing RCRA regulations. RCRA is a national program and we have written regulations accordingly. In practice, this means that all members of the regulated community have to meet the same standard, whether it is numeric or technological (*i.e.*, a site with ''good'' transport characteristics does not get to accept higher concentrations of hazardous constituents than sites with relatively poorer characteristics). Under certain conditions, the standard may be adjusted to meet the regulated party's specific circumstances (*e.g.*, through a delisting petition or variance). In these cases, we create a process that an applicant can use to justify an alternative standard. This would be somewhat analogous to allowing a disposal facility operator to calculate site-specific concentration limits, as we discussed earlier in this section.

Another option would be to set other restrictions on site characteristics for RCRA-permitted landfills accepting low-activity mixed waste for disposal. We believe the modeling should be conducted with the intent that any facility that could be sited and permitted under RCRA Subtitle C could safely dispose of LAMW. However, some commenters may believe that some locations would not be appropriate for radionuclide disposal without additional conditions or site-specific analysis, especially if these locations have relatively poor overall transport characteristics or geologic features such as fractures in the subsurface that might provide faster transport pathways to the ground water. If we were to identify such criteria that go beyond the existing RCRA criteria (*i.e.*, if simply having a RCRA permit is not sufficient), what should they be? If a site did not meet the basic eligibility criteria, should there be an alternative ''qualification'' process (*e.g.*, through the type of site-specific analysis discussed earlier in this section)? For purposes of an implementable standard, the basic eligibility criteria would need to be clearly defined in the rule itself (NRC may or may not require additional conditions or restrictions on waste streams under its authority before RCRA–C facilities could accept those wastes). We also would need to clearly relate these specific characteristics to a performance objective. Therefore, we also ask that commenters provide supporting technical or scientific information that describes how their recommendations would improve facility performance, and how they would define ''good'' performance. The criteria could include climatological characteristics such as annual precipitation, transport characteristics of the unsaturated zone, depth to ground water, or proximity to other features that affect site suitability. These minimum criteria then would be factored into the basis for deriving radionuclide concentrations from off-site exposures.

We also note that RCRA authorized States can issue standards that are more stringent than the national program. This means that some States could already have siting criteria for RCRA facilities that explicitly address some of the factors mentioned above. We would welcome comments that identify such criteria and indicate the technical and scientific basis for their adoption. As we have stated before, we believe that the modeling should be sufficiently conservative to account for reasonably anticipated variations in site performance, so that special conditions would not be necessary.

iii. Modeling Timeframe. Another factor in modeling the long-term performance of a disposal cell is the time period covered by the modeling. We believe that a 1,000 year modeling period may be appropriate, although we

also expect to examine performance over longer times (*e.g.*, up to 10,000 years) to see how well a 1,000 year modeling period captures the behavior of most radionuclides. There is no consensus on the most appropriate time for performance assessments. Periods from 100 years to 10,000 years have been used in assessments for various waste disposal methods. While NRC regulations do not specify a time period in 10 CFR part 61, NRC guidance in ''A Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities,'' NUREG–1573 (2000), endorses a 10,000-year modeling period for licensed LLRW sites. However, NRC generally uses a 1,000-year period for assessing the dose consequence of residual radioactive material at the time of license termination. NRC has its radiological criteria for license termination in 10 CFR part 20, subpart E. The 1,000-year period is typical for evaluations of low-level waste disposal (as opposed to high-level waste or spent fuel disposal, which generally focus on much longer time periods), and is specified by DOE for performance assessments at its disposal facilities (DOE Manual 435.1–1, ''Radioactive Waste Management Manual''). However, some believe that modeling for low-level radioactive waste must also look at periods well beyond 1,000 years (to 10,000 years or longer) to fully address the possibility of significant change to the site from erosion or other long-term or cyclic processes. Others believe that a modeling period of 1,000 years or longer stretches the credibility of what modeling can reasonably project, and that at most it is possible to examine with confidence only a few hundred years (particularly with near-surface facilities, which are more easily affected by climatic or geologic changes than are deep subsurface facilities). We believe that 1,000 years may be appropriate because it is likely that the rule will involve such low radionuclide concentrations that the value of modeling over longer periods becomes more questionable in the light of expected changes in surface conditions over longer periods. It may also be appropriate to consider periods on the order of 100 years as more consistent with the RCRA approach to post-closure site care. We request comment on the appropriate timeframe for modeling.

c. ''Off-Normal'' Events. In assessing the long-term performance of the disposal cell, we typically use fairly well defined climatic conditions (*e.g.*, precipitation rates) and incorporate assumptions about the behavior of the engineered cap and liner. However, we must also consider what happens when the system departs from ''normal'' behavior. Situations to be examined would include heavier than normal precipitation over a period of years (or possibly the indefinite future), alternative cap and liner degradation scenarios, and the possibility that the rate of water entering into the disposal cell would exceed the rate exiting the cell, causing water levels to rise inside the cell. In such a situation (also known as the ''bathtub effect''), waste remains in contact with water and radionuclide concentrations can build up in the water collected in the disposal cell, so that when releases to the subsurface occur, radionuclide concentrations are higher than they would be if the water spent less time in contact with the waste. Alternatively, continued heavy precipitation could cause the water level to overflow the disposal cell, providing a surface pathway for radionuclide transport.

d. Disposal Facility Worker. For radionuclides that remain immobile under the off-site exposure modeling described above (*i.e.*, those that do not reach the receptor well within the modeling period, even with conservative transport assumptions), there must be another means of developing waste concentration limits. One approach that might be considered is the possible exposure that workers at the RCRA disposal facility might receive because of radiation from the waste material. In this case, exposures to the RCRA-C worker would also serve as a benchmark for public exposures, both during the facility's operational life and after final closure. Assessing worker dose will allow estimations of exposures to the public without relying on excessively speculative exposure scenarios; as discussed below, we believe that anyone who is not directly handling the waste will receive much lower exposures than would be expected of a worker.

The worker exposure analysis being considered would serve two functions. First, it would limit potential exposures to the general public in a manner that is generally consistent with the risk management approach for radiation exposure to members of the general public that EPA uses in its regulatory programs and NRC uses at fully-licensed low-level waste disposal facilities. We would expect exposures to people not directly handling waste to be much less than the exposures considered as a reference level for modeling. We believe that this will ensure that actual exposures to true members of the general public, such as visitors during the operating life of the facility, will be minimal. We believe such an approach is appropriate for the disposal of low-activity mixed waste under this proposal. Second, it should provide a reasonable basis for NRC, and Agreement States, to determine whether significant additional worker protection requirements beyond those of RCRA are necessary. Specifically, whether NRC should consider requiring inclusion of training, personal dosimetry, record keeping and reporting, in its regulatory approach. The goal is to identify radionuclide concentrations that are low enough for the NRC to conclude that it is unnecessary to consider RCRA workers as occupational workers under NRC regulations. We also note that workers handling AEA material are subject to NRC's occupational radiation standards, rather than Occupational Safety and Health Administration (OSHA) standards. Workers handling non-AEA material are subject to the ionizing radiation standards issued by OSHA, which are found in 29 CFR 1910.1096. We anticipate that NRC's consideration of worker protection requirements would be likely to address the necessary elements of the OSHA requirements.

We emphasize that we do not intend to set a standard for worker exposure. However, we are considering modeling several worker exposure scenarios to assist in setting the radionuclide concentration limits for LAMW. Some scenarios might assume that the waste already has been treated and stabilized in a cement/concrete mixture, or in a less dense medium such as polyethylene. This would mean that the radionuclides most likely to be limited by a worker scenario are those that emit strong gamma radiation. Alpha, beta, and weak gamma emissions are not as likely to be able to escape the stabilized waste form to expose the worker. However, we are also considering scenarios involving bulk waste that is neither solidified nor containerized. These scenarios would present a greater risk of waste becoming airborne, leading to exposure by inhalation or ingestion. In such cases, the alpha, beta, and weak gamma emissions would be of more importance than for stabilized waste forms. We seek comment on the proportion of bulk waste that might be disposed under this rulemaking.

e. Transportation Worker. It might be necessary to consider exposures to a worker involved in transporting waste to the RCRA disposal facility. The transportation worker would most likely be exposed through pathways similar to a disposal facility worker who handles waste containers within the facility. In

such a case, we would make assumptions about how close the worker is to the waste and for what length of time. We would also consider Department of Transportation requirements for transportation of radioactive material.

f. Post-Closure Site Use. The worker exposure modeling we envision would also help assure limited exposures to the public in the future, when all waste is buried and the site is closed. Because existing regulations allow RCRA sites to remain privately owned, it is possible that a site could be made available for some limited (surface) use after closure. People who casually traverse the site, or even spend hours at a time engaged in an activity, would not be expected to receive doses that exceed those calculated for the worker, and therefore such doses should be acceptable.

When a Subtitle C disposal facility closes, RCRA requires that the owner/operator file a survey plat with the local land-use authorities and the EPA Regional Administrator that shows the location of all hazardous waste units.[11] The survey plat must note that the future use of the land is restricted in accordance with applicable regulations. The deed to the property also must state that it has been used to manage hazardous waste and must cite the appropriate restrictions on future use. At a minimum, use of the property that will disturb the integrity of the final cover, the liner, or other parts of the containment system is not permitted unless necessary to protect human health and the environment, or if such use will not increase the potential hazard to human health and the environment.

The facility's owner or operator must construct the final closure cap to minimize infiltration and erosion and accommodate settling or subsidence with little maintenance (40 CFR 264.310, although active maintenance would be possible during the post-closure care period). Even in the event of some noticeable erosion of the cap, which would not occur until well after final closure, doses to an exposed person should remain well within acceptable public dose limits. Because of the multi-layer cap construction, erosion by itself should not be sufficient to expose the waste. We believe that the controls established by RCRA will be adequate to prevent intrusion, more extensive use, or disruption of the site. NRC may apply the 10 CFR part 20, subpart E, unrestricted use standard of 25 mrem to RCRA sites chosen for disposal of low-activity mixed waste. If subpart E is applied, NRC might not impose additional facility requirements. On the other hand, NRC could decide that additional controls for such sites are necessary. Specifically, NRC could impose extended post closure care, restricted access after closure, limitations on land use and restricted site ownership requirements to such disposal sites. In this ANPR, we are assuming that such additional requirements will not exist.

Although we believe limited use of an undisturbed LAMW disposal site is not likely to present a significant risk to members of the public, we must consider the possibility of more extensive use involving a disturbance of the disposal cell. A common scenario for such an analysis involves a person who builds a house on the disposal site, where the construction involves excavation of some portion of the disposal cell, disturbing the waste layer and scattering of the contaminated material on the surface. The foundation and basement could be constructed at some depth in the disposal cell, and the resident could engage in small-scale crop production or raise some livestock on the contaminated site. Further, in locating water to support the resident, it might be assumed that a well is drilled through the disposal cell, involving some exposure to the driller(s) as contaminated material is brought to the surface.

This last possibility introduces the prospect that some disturbance of the cell would enhance transport of radionuclides to the off-site receptor. In past actions (*e.g.*, geological disposal) we have addressed a person who uses heavy equipment, such as a drill rig, to penetrate the waste layer and cell liner, essentially creating a pathway for radionuclides to move through the unsaturated zone to the aquifer. If one assumes this type of drilling scenario, how would such a disturbance affect the release and transport of radionuclides? The most likely effect would be to create a pathway for the transport of material containing radionuclides through the unsaturated zone into direct contact with the aquifer. We would expect that only a very small volume of waste would be affected by such action. Whether the waste is solidified or not, the bulk of the radioactive material would be likely to stay within the confines of the original disposal cell. It is also clear that there would be no change in the way radionuclides are released from the waste material remaining in the cell. Once a radionuclide is released, however, the penetration may provide a preferred pathway that decreases the travel time through the unsaturated zone.

If they could occur, the types of site disturbances described above would happen at some time in the future beyond the end of the RCRA post-closure period. We do not consider such disturbances to be very likely, given the site controls prescribed by RCRA regulations,[12] but must examine them as an extreme scenario. In its rulemaking for 10 CFR part 61, NRC concluded that the possibility of extensive inadvertent intrusion activities at near surface disposal facilities was not credible for waste in a structurally stable waste form (that is, as long as the waste remained in a form recognizably man-made, either in a stabilizing medium or container, intruders would determine that it should not be disturbed).[13] If we assume that the intrusion occurs after any solidified waste has broken down or containers have degraded, this would likely be several hundred years beyond site closure, suggesting that shorter-lived radionuclides will have decayed. We note that hazardous constituents that do not degrade over time, such as heavy metals, will still be present in the disposal cell and may present a risk comparable to or greater than the risk from radionuclides. We also note that the closure requirements described above apply to Subtitle C facilities. As commenters consider the applicability of this approach to Subtitle D facilities (*see* section II.A.2), it would be appropriate to consider whether the same post-closure exposure scenarios would apply to those facilities.

4. Other Considerations Affecting the Risk Analysis

a. Use of Part 61 Classification System. For LLRW, the NRC system defines three waste classes (A, B, C) by the concentration of each radionuclide. Class A has the lowest concentrations of short- and long-lived radionuclides and is the least restrictive in terms of packaging requirements. Classes B and C have more stringent packaging and stabilization requirements. Class C waste must be located at least 5 meters below ground. NRC does not consider low-level radioactive waste that exceeds Class C concentrations (''Greater-than-Class C'' waste) to be generally suitable for disposal in a near-surface facility. Some radionuclides do not move easily with ground water (or are very short-lived) and may also not be significant contributors to worker or post-closure

[11] 40 CFR part 264, subpart G.

[12] 40 CFR part 264.

[13] *See* Draft Environmental Impact Statement on 10 CFR part 61, NUREG–0782, Vol. 2, page 4–53, Sept. 1981.

public exposure. This means that the limiting concentrations could be very high if we relied solely on the various modeling scenarios we have identified. In some cases the limiting concentrations from modeling may exceed the maximum concentrations established by the NRC for Class A low-level radioactive waste (*see* 10 CFR 61.55). In these cases, we believe that it might be appropriate to set the concentration limit equal to the Class A maximum value.

It is important to use credible modeling scenarios to the extent possible to establish the capability of the RCRA–C technology for radionuclide containment and isolation, and not to rely on the Class A restriction or other such considerations, except in special cases. We are concerned that it could be very difficult for us and NRC to justify a ''simplified'' regulatory approach if a significant number of radionuclides were at their Class A maximum values. That is, it would be less likely that the resulting concentration limits would be appropriate for disposal in RCRA–C facilities in the absence of significant NRC licensing criteria. In any event, it would defeat the purpose of simplifying LAMW disposal to require RCRA–C facilities to undergo a complicated licensing process.

b. Waste Form and Packaging. An important factor in this analysis is waste treatment prior to disposal. Mixed waste must undergo treatment for its hazardous constituents to comply with the RCRA land disposal restrictions of 40 CFR part 268. Treated RCRA waste often is solidified or stabilized in some type of encapsulating medium to prevent migration of the remaining hazardous constituents. Cement/concrete is the most common encapsulating medium because of its ready availability, cost, and experience in its use. Other encapsulating technologies, such as vitrification or use of polymers or ceramics, are less common but may be more effective than cement/concrete at binding mobile constituents. There are no such treatment requirements for Class A LLRW, other than restrictions on liquid content (although LLRW must be treated ''to reduce to the maximum extent practicable'' the hazard from non-radiological material). The modeling is expected to consider various waste forms. Of the available encapsulating technologies, we would consider use of cement/concrete as the most conservative case. Though a common practice, stabilization is not necessarily a requirement for compliance with land disposal restrictions. If solidification or stabilization is not the treatment standard for a particular hazardous constituent, RCRA requires that the solidified waste form be tested to show that it meets the prescribed treatment standard. We request comment on whether it is reasonable to assume a stabilized waste form as a treatment of choice for LAMW and whether a rule should require waste stabilization. Such a requirement, however, could make the disposal of bulk low-activity waste in RCRA C landfills prohibitively expensive. (Bulk wastes could include such items as soil, demolition debris, and slag or other industrial process residuals.) Alternatively, it may be appropriate to have a different set of concentration limits for disposal of bulk wastes.

As stated earlier, we request comment on the possibility of individual disposal facilities developing alternative concentration limits. The performance of less-common encapsulating technologies could be a factor in permitting such alternative calculations. However, there are limited data available compared to the extensive literature available on cement/concrete. In addition to comment, we request information regarding the long-term performance of encapsulating technologies, particularly as they pertain to radionuclides.

Waste containers also provide a barrier against radionuclide releases, as well as adding structural stability to the waste form. Containers are typically drums or boxes, made of metal or polymer. It is not unusual for RCRA treatment to result in a waste form that is solidified inside a container (for example, mixing ash or other treatment residue with cement). NRC regulations require Class B and C LLRW to be in containers; if Class A waste is not in containers, it must be segregated from the waste that is in containers. We request comment on the need to specify container requirements in the rule.

c. Activity Caps. As stated above, under our basic concept, wastes with radionuclide concentrations higher than established in the rule would not be eligible for disposal in the RCRA–C disposal cell. However, waste with higher concentrations might be acceptable if the total number of curies in the disposal cell remained below a certain level (in conjunction with or in lieu of concentration limits). This could mean placing limits on the total curies of radionuclides disposed of at a site, inventory limits on specific radionuclides, or waste volume limitations (as an indirect and more conservative method to limit activity, since not all the waste would be expected to contain the maximum radionuclide concentrations). Further, because modeling the performance of facilities over the long term involves estimates of the inventory of radionuclides present at site closure, limits of this type would help reduce uncertainty in those estimates. We request comment on this issue. We also request comment on how facilities could demonstrate compliance with such activity limits, how such demonstrations might relate to on-going operations at a RCRA–C facility, and the limitations to such an approach.

d. *Unity Rule.* Overall doses to a receptor could be limited through a ''sum of fractions'' approach similar to the methodology used in 10 CFR 61.55. Under this approach, a disposal facility could accept waste containing multiple radionuclides only if the sum of the fractions of the individual radionuclide concentration limits did not exceed one (or ''unity''). For example, a disposal facility could not accept waste containing radionuclides X, Y, and Z at concentrations ½, ⅓, and ⅓ of their individual concentration limits because $\frac{1}{2} + \frac{1}{3} + \frac{1}{3} > 1$. Concentration tables might be based on several methods of analysis, such as long-term performance assessment and worker exposure, and a simple sum of fractions approach may not be the most appropriate way to account for the different methods used to derive waste concentrations. It is also possible that peak exposures from different radionuclides in a long-term performance assessment may be separated by hundreds of years (given differences in half-life and environmental mobility), indicating that summing may not be appropriate even if the exposure mechanisms are the same. NRC derived its tables in 10 CFR part 61 from a common analysis for all radionuclides,[14] and issued separate tables for short- and long-lived radionuclides. As we are coordinating this effort with NRC, we request comment regarding alternative methods to accomplish the same goal of limiting overall doses.

5. Risk or Dose Basis for a LAMW Standard

The modeling described in section II.D.3 will be designed to protect members of the public during the operating life of the disposal facility and beyond. By modeling long-term facility performance, ground water and future residents near the disposal facility will be protected. Basing radionuclide

[14] *See* Draft Environmental Impact Statement on 10 CFR part 61, NUREG–0782, Vol. 2, Section 7–2, September 1981.

concentrations in the waste on a worker exposure analysis ensures that people at or near the site while waste is being handled are not exposed to unacceptable levels of radiation (*see* section II.D.3.d). Also, we expect that exposures to people who might be at the site after the facility is closed would be well within acceptable public dose limits. The radionuclide concentrations in the mixed waste will be based on levels that are bounded by the risk management approach for radiation exposure to members of the public that EPA uses in its regulatory programs and NRC uses at licensed low-level waste disposal facilities. There are a range of possible exposure levels that could be considered to be consistent with EPA risk management policies. We believe setting dose or risk limits within these values will be appropriate for the disposal of mixed waste under the approach. We, in cooperation with the NRC, intend to select exposures that should result in concentration limits that will be protective for all RCRA–C facilities, should minimize the need for additional NRC requirements, and will help generators to dispose of a considerable portion of their mixed waste.

Numerous factors will play a role in deciding what reference exposure levels should be used. Many of these factors reflect prior Federal and non-Federal risk management decisions related to radioactive waste management and disposal, supporting technical information, and risk levels applied under different statutory and regulatory actions. The regulatory approach selected by NRC may be an important factor.

When we use the term ''risk'' in general, we are talking about correlating exposures to contaminants with health effects resulting from those exposures. Risk is often expressed as the likelihood of an exposure resulting in a given health effect within a population. A risk of 10^{-4} for example, means that a level of exposure will cause (on average) a health effect in one person out of a population of 10,000. Where radiation is concerned, there are two basic ways to express this correlation (radiation risk focuses on cancer, either incidence or fatality). Radiation protection standards (including those issued by EPA) have traditionally been written in terms of dose (*e.g.*, in millirem), which is an expression of the physical effect on body tissue of the energies transmitted by radiation. Dose can be translated to risk; however, there have been a number of different ways to calculate dose (*see* Table 1), and the correlations with risk are affected by the dose system used. Our current estimates are that an annual committed effective dose equivalent of 15 millirem (mrem), incurred each year for a period of 30 years, carries a lifetime risk of fatal cancer of approximately 3×10^{-4} (3 in 10,000). This is an ''average'' dose, and the correlation will differ for individual radionuclides (*i.e.*, taking each radionuclide separately, the lifetime risk associated with an annual exposure of 15 mrem may be somewhat higher or lower than $\times 10^{-4}$). It is generally estimated that the average person in the United States can expect to receive an annual dose of about 300 mrem from natural sources, such as cosmic radiation, radon, and naturally occurring radionuclides in soil, rocks, and building materials.

The other way to express this correlation is to calculate risk directly. This is the approach used by our Superfund program in determining cleanup levels, and applies methods developed more recently than the dose-to-risk correlations. The differences in risk estimates using the two methods can be significant for some radionuclides; however, in some cases the direct risk calculation is higher, in other cases the conversion from dose gives the higher risk. The dose-to-risk method is more familiar to the radiation community and consistent with radiation protection standards, while the direct calculation of risk is more consistent with the way non-radiation hazards (such as RCRA hazardous waste) are evaluated. We request comment on which method should underlie the calculation of radionuclide concentration limits in LAMW.

To provide perspective, we examined risk management decisions we made in areas other than radiation risk. Though the RCRA corrective action standards do not specify radionuclides (61 FR 19432, May 1, 1996), cleanup levels are to be determined on a site-by-site basis, using other promulgated standards where appropriate. Generally, EPA considers 10^{-4} to 10^{-6} to be the acceptable lifetime risk range for all contaminants. However, the preference is for remedies at the lower (more protective) end of the risk range; 10^{-6} is considered a point of departure, and applying situation-specific factors may result in risk within the target range but above 10^{-6}. The RCRA corrective action standards also are designed to be consistent with Superfund.

In order to provide context for the reference exposure levels that will be used to derive the limiting radionuclide waste concentrations, we list current EPA and NRC radiation limits in Table 1, which are given in terms of dose. It is important to understand that some of these limits are in the ''whole body'' format, while other, more recent limits are in the ''effective dose'' format. Further, the ''committed'' effective dose (CED) explicitly accounts for internal radiation contributions from radionuclides remaining in the body from earlier intakes (the ''total'' effective dose equivalent, or TEDE, has a similar purpose). The dose under the ''old'' format translates into different doses for different radionuclides under the ''new'' format. The translation depends on how a particular radionuclide distributes itself throughout the body. Iodine, for example, preferentially deposits in the thyroid, which is a very small organ. Iodine's effective dose at the 4 mrem/year whole body or any organ Maximum Contaminant Level (MCL) for drinking water is less than 1 mrem/year. However, in an evaluation completed in December 2000, we reaffirmed that the radionuclide MCLs derived from a 4 mrem/yr whole body dose generally fall within our target lifetime risk range of 10^{-4} to 10^{-6} when more recent risk assessment methods are applied (65 FR 76716, December 7, 2000).

TABLE 1.—CURRENT EPA AND NRC RADIATION DOSE LIMITS

Uranium Fuel Cycle (40 CFR 190.10(a))	25 mrem/year whole body, 75 mrem/year thyroid, mrem/year any other organ.
Generally Applicable Standard for Management and Storage of Spent Nuclear Fuel (SNF) and High Level Waste (HLW) (40 CFR 191.03).	25 mrem/year whole body, 75 mrem/year thyroid, mrem/year any other critical organ.
Land Disposal of Low-Level Radioactive Waste (10 CFR 61.41)	25 mrem/yr whole body, 75 mrem/yr thyroid, 25 mrem/yr any other organ.
Decommissioning Nuclear Facilities (10 CFR 20.1402)	25 mrem/yr TEDE, all pathways (unrestricted use, although use of alternative criteria may allow up to 100 mrem/yr TEDE)).
Generally Applicable Individual-Dose Standard for Disposal of SNF and HLW (40 CFR 191.15).	15 mrem CED/year.

TABLE 1.—CURRENT EPA AND NRC RADIATION DOSE LIMITS—Continued

Individual-Protection Standard for Disposal of SNF and HLW at Yucca Mountain, NV (40 CFR 197.20).	15 mrem CEDE/year.
National Emission Standards for Hazardous Air Pollutants (40 CFR part 61).	10 mrem EDE/year.
SNF and HLW Disposal Limit for Underground Sources of Drinking Water (40 CFR 191.24, 197.30).	4 mrem/year for manmade beta- and photonemitting radionuclides whole body or any internal organ, 15 pCi/l alpha 197.30) 5 pCi/l radium.
Maximum Contaminant Levels for Community Drinking Water systems (40 CFR 141.16).	4 mrem/year for manmade beta- and photonemitting radionuclides whole body or any internal organ, 15 pCi/l alpha, 5 pCi/l radium, 30 micrograms/liter uranium.

Our analysis of our 40 CFR part 191 standard for disposal of spent nuclear fuel and high-level waste found that, for the radionuclides and conditions associated with disposal of those wastes, 15 mrem/year under the more recent effective dose method carries a risk roughly equivalent to a 25 mrem/year dose using the whole body method.[15]

As noted above, facilities licensed under 10 CFR part 61 must limit all-pathways exposures to the public (as calculated through long-term performance assessment) to 25 mrem/year (whole body), and facilities requesting license termination without restrictions on future site use must satisfy the licensing authority that doses will not exceed 25 mrem/yr total effective dose equivalent (TEDE) from all potential pathways. However, in both of these situations dose assessments are typically well below these regulatory thresholds. In selecting a reference exposure that would be used to derive concentration limits and allow for a simpler regulatory approach, we believe it would be appropriate for facilities operating under such a simplified approach to consider doses as being at or below the level applicable to other types of licensed facilities.

When compared to public exposures, there may be some additional flexibility in selecting a reference exposure level for the worker exposure scenario. For one thing, pathways such as inhalation and direct radiation, rather than ground water, would be expected to predominate. An evaluation of worker exposures will also consider the fact that these doses would not be to the broader public from radionuclides in the environment, but generally would be limited to a fairly small group of individuals. It may also be that workers would not expect to receive consistent annual exposures for a period of years because certain exposure scenarios might not occur regularly. Nevertheless, workers may be examined in the context of both maximally exposed members of the public and as workers under NRC exposure regulations (workers handling AEA material are subject to NRC occupational requirements even if the facility is not licensed). The goal is to coordinate the selection of a level that provides appropriate protection and will not cause NRC to require significant additional worker protection requirements.

We request comment on the appropriate level of protection to use in our analyses (*e.g.*, on a dose basis, 1 mrem, 10, 15, 25; on a risk basis, 10^{-4}, 10^{-5}, 10^{-6}; lifetime or annual exposure). We would like commenters to address whether the same level(s) should apply to all analyses, or whether specific types of modeling (*e.g.*, long-term performance or worker protection) should be based on different exposures, and if so, why. Would it depend on when the exposures would occur? The predominant pathways? Who the exposed person would be?

On a related issue, some of the radionuclides we examine may also have toxic effects separate from their radioactive properties. Many of these elements, such as lead, have already been evaluated within the RCRA framework. Others have not. Uranium, for example, is known to have effects on kidney function that may be of more concern than its radiation effects. The drinking water MCL in Table 1 did consider these toxic effects. How should we address such situations? Are there other elements that would be of particular concern?

E. What Legal Authority Does EPA Have Under the AEA?

The crux of our approach would be to provide an additional regulatory avenue for expanding the availability of mixed and other low-activity radioactive waste disposal options. Typically, when EPA establishes radiation protection standards, the statutory authority is the Atomic Energy Act of 1954, as amended,[16] and Reorganization Plan No. 3 of 1970 (the Plan).[17] The Plan transfers to EPA the ''functions of the Atomic Energy Commission (AEC) [now the NRC and the DOE] under the Atomic Energy Act'' to the extent that those functions consist of establishing ''generally applicable environmental standards for the protection of the general environment from radioactive material.''[18] The Plan defines standards as ''limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.''[19] The functions of the AEC under the AEA include the authority to ''establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. * * * 42 U.S.C. 2201(b). To the extent that such rulemaking activity involves the establishment of generally applicable environmental standards this authority is vested in the Administrator of the EPA.

F. What Regulatory Approaches Could NRC Take With Respect to Disposal of LAMW?

NRC has provided us with general information on regulatory approaches it would consider for low-activity mixed waste disposal. These are:

1. Regulatory Approaches that Could Apply to RCRA Facilities

• Specific License for RCRA–C Disposal Facility—In this case, NRC would modify its regulations to allow a RCRA–C landfill facility wanting to accept for disposal LAMW meeting the

[15] 58 FR 66402, December 20, 1993.

[16] 42 U.S.C. 2011 *et seq.* (1994).

[17] Reorganization Plan No. 3 of 1970. 35 FR 15623 (1970). Published October 6, 1970; effective December 2, 1970. 84 Stat. 2086 (1970) (codified at 5 U.S.C. App. 1).

[18] *Id.* at section 2(a)(6).

[19] *Id.*

specified conditions (*e.g.*, radionuclide concentration limits) to apply for a specific NRC license under NRC regulations, such as 10 CFR part 61. NRC would assess the protections offered by RCRA–C technology on a site-specific basis. NRC would retain its authority to enforce and inspect as in the case of all NRC licensees.

• General License for RCRA–C Disposal Facility—In this case NRC would modify its regulations (*e.g.*, 10 CFR part 61) through rulemaking to include RCRA–C disposal facilities as a class of facilities under an NRC general license that enables the facility to accept (''possess'') LAMW for disposal. Disposal facilities would not have to supply applications or paperwork to NRC for specific approval of a license. NRC could choose to place additional conditions or requirements on the disposal facility in granting a general license, or could defer completely to the protection offered by the RCRA–C requirements. An example would be that the facility meets RCRA–C requirements and that the LAMW accepted by the facility meets the concentration limits established in accordance with the approach presented in this ANPR. Under a general license, NRC retains its authority to inspect and enforce its requirements, including issuance of civil penalties where warranted; however, in this case, it may be appropriate for NRC to rely on EPA for facility oversight.

• Exemption for RCRA–C Disposal Facility—In this case, NRC would modify its regulations, as appropriate, to exempt RCRA–C disposal facilities that accept LAMW from NRC requirements (including requirements to obtain an NRC or Agreement State license), and modify 10 CFR 20.2001 to allow transfer of waste to exempted facilities. This would essentially be NRC deferring regulatory oversight of licensed material at the disposal site to a regulatory system that already has jurisdiction over the non-AEA portion of the waste and has demonstrated sufficient protectiveness for specified concentrations of radionuclides. Failure of a RCRA–C facility to meet the conditions of the exemption could lead to regulatory action by NRC. NRC would still maintain the ability to conduct inspections; however, in this case, it may be appropriate for NRC to rely on EPA for facility oversight.

2. Regulation of LAMW Generators

NRC could modify its regulations, as appropriate, to allow the LAMW generator to transfer certain material to an approved RCRA–C facility for disposal under one of the above approaches.

We request comment on these options.

G. How Might DOE Implement a LAMW Standard?

DOE regulates the management of its own LLRW and the radioactive component of its mixed waste under the authority granted to DOE by the AEA. The AEA and principles of sovereign immunity limit the States' ability to regulate DOE's management and disposal of its own AEA materials, including the radioactive component of MW. Because DOE is ''self-regulating'' under the AEA, the low-activity mixed waste disposal approach presented in this ANPR would not be applicable to DOE LAMW unless DOE takes action under its AEA authority to implement it. Several options for implementation are plausible. Most DOE wastes are disposed of in facilities at the generating site. For situations where sufficiently protective on-site disposal is not feasible, costs are excessive, or off-site disposal is otherwise advantageous, other disposal alternatives are considered. DOE could establish some sort of internal authorization process before allowing LAMW to be transported and disposed at a RCRA Subtitle C landfill. Alternatively, DOE could choose to exempt LAMW meeting the radionuclide concentrations derived in this approach from its AEA regulatory purview and send such waste to its own RCRA Subtitle C landfills or commercial Subtitle C landfills accepting such waste. Because of the potentially larger volumes of LAMW generated by DOE, stakeholder interests and concerns should be given consideration by DOE in determining how DOE would implement the approach suggested in this document.

1. DOE's ''Authorized Limits'' System

At present, DOE has in place a process to evaluate waste on a ''case by case'' basis to determine the radiological risk. This ''authorized limits'' system allows DOE generating sites to provide waste characterization information to support disposal at non-AEA regulated facilities. Approvals for disposal of volumetrically contaminated waste (as opposed to surface contamination) are given by the Assistant Secretary of Environment, Safety and Health. DOE also seeks to ensure that releases are consistent with the receiving facility's waste acceptance criteria and are coordinated with, and acceptable to, facility operators and Federal, State, and local regulators. DOE's approach relies on a disposal facility's existing procedures to maintain protectiveness, and typically does not place additional radiation protection requirements on the facility operator. The rule could provide a more uniform basis for allowing such disposal. Because DOE is self-regulating under the AEA, the rule would not limit DOE's ability to dispose, at facilities not regulated by NRC or Agreement States, wastes that have been evaluated on a ''case by case'' basis pursuant to DOE's existing ''authorized limits'' process.

DOE manages its operations through a series of directives, including Orders (which describe basic requirements), Manuals (more detailed procedures), and Guides (recommendations or ''best practices''). The ''authorized limits'' process described above is included in DOE's Order 5400.5, ''Radiation Protection of the Public and the Environment'' (note that the ''authorized limits'' decisions are handled through the radiation protection program, not the waste management program). Adopting the approach presented in this ANPR would probably require DOE to revise one or more of its directives.

2. DOE's Radiological Control Criteria

For several years, DOE has been developing an approach similar to the disposal concept in today's action. DOE has been modeling exposures from treatment, transportation, and disposal to assess the feasibility of setting uniform limits that would allow certain mixed waste meeting established activity limits to be handled solely within the RCRA system. DOE believes its analyses show that a significant portion of its mixed waste could be handled without presenting a significant radiological risk, and believes that the approach presented here has the potential to facilitate that process. Throughout the development of this process, DOE has sought advice and review from Federal agencies and State regulators, and kept them apprised of its progress and intent.

H. How Would States Implement the Standard?

1. Would States Be Required To Implement the Standard?

Even if we and NRC both take regulatory action to allow LAMW disposal, it is likely that much of the actual implementation will occur at the State level. Many States are authorized to carry out both AEA regulatory functions and RCRA programs. There are 32 NRC Agreement States and 45 States are authorized under RCRA to carry out a mixed waste program. Under section 274b of the Atomic Energy Act,

States can enter into agreements with the NRC such that the NRC relinquishes Federal authority and the Agreement States assume regulatory responsibility over certain byproduct, source, and small quantities of special nuclear material under State laws. The degree of compatibility for such programs is determined by NRC. (NRC also retains certain functions, such as licensing and oversight of nuclear power plants.) NRC also reviews Agreement State programs for continued adequacy to protect public health and safety and compatibility with NRC's regulatory programs. We understand that State programs will have to evaluate carefully this approach and any implementing regulations issued by the NRC as they would apply to specific hazardous waste disposal facilities. We also understand that some States have statutory restrictions on disposal of radionuclides with hazardous waste, and that others may be otherwise opposed to allowing such disposal. However, many States already allow disposal of waste with very low radionuclide concentrations in RCRA Subtitle C or D landfills on a case-by-case basis. The approach that we are presenting in this ANPR would not affect NRC's or the States' authority under the AEA to make such individual decisions for mixed waste under their purview. However, identifying acceptable concentrations of radionuclides in LAMW (and/or low-activity radioactive waste in general) in cooperation with the NRC, should allow a more consistent approach supported by rigorous technical analyses while providing a regulatory framework to ensure that disposal of LAMW/LARW in hazardous waste landfills is protective of human health and the environment.

Previous discussions with State regulators have raised a number of important questions that we believe all States should consider, including:

- Whether a disposal facility's RCRA permit would need revision;
- How even reduced dual regulation would affect the disposal facility's day-to-day operation (assuming NRC and/or DOE opt to exert some authority over the disposal facility);
- How corrective actions would be addressed;
- To what extent public input should be sought; and
- Whether the State should consider further limits on the facilities or the waste.

Our authority is limited and our standard may not resolve all such issues. Changing the regulatory system for mixed waste disposal requires action from both Federal and State authorities to provide a workable, protective, and comprehensive institutional framework. We recommend that States consider how they might use their distinct authorities to assist in developing such a framework. We welcome comment from States that would facilitate a workable approach to a meaningful standard incorporating radionuclide concentrations in the waste. We are also interested in knowing whether States believe such a standard should allow the flexibility to dispose of higher concentrations if disposal facilities implement additional radiation protection provisions or demonstrate site-specific conditions particularly favorable for containment and isolation of radionuclides.

2. State Programs

a. Facility Permitting/Public Participation. Although we believe that the technical approach to low-activity mixed waste disposal is sound, we recognize that we are considering disposal of radionuclides in facilities that were not sited or permitted with the expectation that they would receive significant quantities of such material. We anticipate that States will view the facility's RCRA permit as one means to ensure the State retains the level of RCRA oversight it believes necessary, although legal considerations suggest that the ability to use a RCRA permit as a vehicle to implement provisions related to AEA material would be limited. We also believe that public participation in the States' adoption of this proposed approach to LAMW disposal is necessary. In general, we believe that the existing RCRA permitting and NRC or Agreement State regulatory processes should provide ample opportunity for public involvement. We request comment on this assumption.

If EPA decides to conduct a rulemaking, public participation will necessarily be part of that process. In addition, when a RCRA permit is modified, the extent of the modification determines the amount of public participation required. For example, if a facility wants to accept a completely new waste stream for disposal (that is, a fundamentally different kind of waste), this is a significant permit modification requiring certain public participation activities. However, adding additional constituents to the ground-water protection program is less significant because it may not by itself represent a change in the way the facility operates or the waste it handles. Again, there would be legal considerations involved in addressing AEA material through the RCRA permit.

We anticipate that NRC might choose from a variety of alternatives, described in section F, to implement the approach described in this ANPR. NRC will conduct a rulemaking with public participation to establish the manner in which it will implement the approach presented here.

We are interested in public comment on the issue of public participation, and how the States' adoption process would provide an opportunity for public participation.

b. Implementation at the Disposal Facility. Although a RCRA–C disposal facility that accepts low-activity mixed waste under the approach presented here may have to modify its operations, we are optimistic that these modifications will not have to be extensive or costly. The facility certainly may need to instruct its workers on the potential effects and proper handling of radioactive material and take steps to limit exposures, although it may not have to apply a full radiation worker program that includes dosimetry. Most facility requirements related to radionuclides likely will be extensions of the administrative, recordkeeping, environmental monitoring, and reporting requirements already involved in hazardous waste disposal. We expect to model a fairly conservative worker exposure scenario, in part, to keep additional requirements minimal. We expect that NRC will address during its rulemaking process the issue of the appropriate level of worker training and procedures needed, if any, to limit exposures to LAMW.

The one major aspect of the facility's operation that may need significant modification is waste acceptance. Because the LAMW disposal concept is based on the radionuclide content of the waste, the facility must be able to verify that the waste accepted for disposal complies with the rule. This situation is analogous to the current requirement that hazardous waste comply with the land disposal restrictions in 40 CFR part 268. In that case, both the generator and treatment facility must certify that the waste does or does not meet the standards in part 268, and attach any supporting information, including waste analysis. Before it can dispose of waste, the disposal facility must have the appropriate certifications and supporting information, and must make certain that the waste accepted for disposal indeed meets the RCRA land disposal restrictions.

At present, generators of low-level radioactive waste are required to certify, before disposal, the radiological content of their LLRW. Generators of LLRW frequently base their characterizations

on process knowledge when workers' exposure to radiation is of concern and knowledge of the waste generating process allows adequate characterization of radionuclide activity. It is common practice to store waste for a period that allows short-lived radionuclides to decay to minimal levels. The most common types of treatment for LLRW are solidification or compaction of dry waste. A treatment facility may simply calculate radionuclide concentrations based on the extent of volume increase or decrease. Disposal facilities commonly use hand-held instruments to survey the exterior of waste containers, which may provide sufficient information to characterize the waste; however, packages are not normally opened for sampling in order to limit occupational exposures. This is in keeping with good health physics practice.

Under the approach presented here, RCRA-permitted hazardous waste disposal facilities will continue to ensure that mixed waste complies with the land disposal restrictions. If the generator sending LAMW for disposal at a RCRA-permitted hazardous waste facility is required to certify compliance with applicable regulatory requirements, it may or may not be necessary for a landfill to conduct independent radiological sampling. The cost associated with extensive radiological sampling and analyses might be a critical factor in a disposal facility's willingness to accept LAMW. Facilities also may perform external radiological surveys to maintain worker safety, if necessary or deemed appropriate. We expect that under the approach presented here, the waste generator would bear primary responsibility for compliance with the standards, including those under RCRA. The generator would thus be responsible for providing the information necessary to determine whether the waste can be disposed of as LAMW at the hazardous waste disposal facility. It might be necessary for the generator to provide analytical confirmation of the radiological content of the waste prior to treatment or disposal. We invite comment on the most appropriate way to ensure that radionuclide concentrations in waste sent for disposal comply with the criteria that would be established, and on whether practices common at RCRA facilities might need modification to limit potential exposures to workers.

In a related question, we would like commenters to consider whether a rule should address volume averaging or ''blending'' of wastes to meet the radionuclide concentrations. RCRA regulations prohibit dilution as a means of meeting treatment standards; however, assuming that LAMW has met the RCRA standards, to what extent should higher-activity waste be allowed to combine with lower-activity waste to meet radionuclide concentration limits? Recently, NRC raised a similar question as part of a rulemaking effort for 10 CFR 40.51(e). (*See* 67 FR 55175, August 28, 2002.) Should this be permitted for waste from similar processes, or with the same radionuclides or RCRA waste codes? This question may be more important in the context of other low-activity radioactive wastes that are not RCRA hazardous, which are discussed in section III. For example, TENORM wastes can be high in volume with significant variation in radionuclide content, and usually a narrow range of radionuclides. Should blending be allowed for these waste streams? Would ''post-blending'' analytical results be necessary to demonstrate compliance with concentration limits, or would knowledge of ''pre-blending'' concentrations be sufficient? What would be the problems associated with analyzing blended waste?

c. *Agreement States.* Under section 274b of the Atomic Energy Act, States can enter into agreements with the NRC such that the NRC relinquishes Federal authority and the Agreement States assume regulatory responsibility over certain byproduct, source, and small quantities of special nuclear material under State laws. The degree of compatibility for such programs is determined by NRC. (NRC also retains certain functions, such as licensing and oversight of nuclear power plants.) NRC has established requirements for specific program elements which States must meet. These compatibility requirements consider trans-boundary issues and program element effects on public health and safety. Depending on the outcome of the NRC rulemaking and the degree of compatibility required for State programs, a LAMW rule could be implemented differently among Agreement States.

d. *Non-Agreement States.* In States that have not entered into agreements with NRC under section 2746 of the AEA, NRC regulations apply directly. Approximately one-third of the States are not Agreement States.

3. Regional Low-Level Radioactive Waste Compacts

The Low-Level Radioactive Waste Policy Act authorizes and encourages States to form regional ''compacts'' to address their long-term disposal needs for ''commercial'' low-level radioactive waste. Most compacts do not plan to accept mixed waste. In general, the terms of a compact spell out the process for selecting a ''host'' State; picking an appropriate site for the disposal facility; and funding site selection, construction, and operation. The ultimate purpose of the compact is to ensure that its member States are self-sufficient and able to manage commercial LLRW generated within the compact. At present, there are ten compacts, encompassing 44 States. Six States remain unaffiliated with any compact. Only the Northwest Compact has an operational waste disposal site, in Richland, WA. The Rocky Mountain Compact may use the Northwest Compact site by agreement. The Barnwell site in South Carolina will remain open to States outside the Atlantic Compact for several more years.[20] Some compacts have delayed their siting process, and at least one compact and several unaffiliated States apparently have no intention of siting disposal facilities. To date the siting of new compact facilities has had very limited success. A number of compact host States, including California, Illinois, Nebraska, Texas, and North Carolina, have expended large amounts of time and money, and undergone a great deal of sensitive political debate, without yet establishing new disposal sites. Regional compacts have procedures to allow waste to enter and exit the compact, which could influence the disposal of low-activity mixed waste at RCRA facilities. Compacts may determine that it is necessary to approve RCRA facilities that accept LAMW as ''regional'' disposal facilities. The limited number of compacts with LLRW disposal facilities has lessened the impact of these ''cross-boundary'' issues thus far. We request comment on how the approach would impact regional low-level waste compacts.

I. Request for Information: LAMW

In order to assist us in planning and conducting our future deliberations related to low-activity mixed waste, we are requesting the voluntary submission of data describing the present situation with respect to the storage, management, transportation, and disposal of LAMW. We are aware that some States perform annual inventories of the different kinds of radioactive waste generated or disposed annually

[20] Barnwell may accept waste from outside the Atlantic Compact (South Carolina, Connecticut, and New Jersey) as long as the non-regional waste does not cause the facility to exceed overall volume limits. Those overall volumes drop from 160,000 cubic feet in fiscal year 2001, the year after South Carolina joined the Atlantic Compact, to 35,000 cubic feet in fiscal year 2008. Under current plans, generators outside the Atlantic Compact will not have access to Barnwell after 2008.

and any data relating to LAMW is welcome. We are also aware of numerous generators that store, rather than dispose, LAMW because of the regulatory and economic difficulties associated with disposal. We would welcome data from a variety of generators on these matters to obtain a more accurate picture of the present issues associated with storing and disposing of LAMW. We would also welcome comment and information from the perspective of companies that operate low-level radioactive waste disposal facilities or RCRA Subtitle C hazardous waste landfills.

We realize that there are quite a number of different generators of LAMW, such as

- Industrial-manufacturing facilities
- Industrial-research and development facilities
- Other industrial facilities
- Academic institutions
- Medical facilities (hospitals and colleges)
- Medical research facilities
- Federal facilities
- Nuclear power plants and associated fuel cycle facilities

To supplement and update currently available data, we are requesting the following types of information (information with clearly labeled units is appreciated):

- *LAMW Generation, Treatment, and Disposal:* For individual waste types or categories of waste, current low-activity mixed waste generation rates and storage, treatment, and disposal practices. Data on types of mixed waste generated, RCRA codes, radionuclide concentrations, storage and treatment techniques, and disposal practices for these waste types or categories of waste, and data on waste volumes before and after treatment would be very useful and informative. In terms of waste concentrations, information that describes the amount of waste within different concentration ranges would be most useful and would assist in gauging the potential usefulness of a standard aimed at LAMW.
- *LAMW Cost Data:* The costs associated with the management of LAMW, including storage costs, costs of sampling and analysis for compliance with RCRA vs AEA requirements. This could include the costs for meeting the universal treatment standards, pre-treatment and treatment costs (by method), packaging and transport costs, disposal costs, and reporting and recordkeeping costs. To the extent the costs can be broken out for meeting RCRA vs AEA requirements, greater understanding of the regulatory burden posed by each authority would follow.
- *Impacts of Actions to Facilitate Disposal:* We also request comments regarding the potential effects of a standard to facilitate the disposal of LAMW. If such a standard were in place today, and such waste could be disposed in a RCRA Subtitle C landfill with little, or no, further NRC requirements, would such a standard enhance the conduct of your business? For example, would it free up resources that could be better directed? Would research or manufacturing activities be facilitated, knowing that a potentially more cost-effective disposal method became available for a certain kind of waste? What impacts, if any, would there be on the choice of health care options? What factors (*e.g.*, economic, regulatory) would influence your decision to dispose of or accept LAMW for disposal under such a standard? Would limiting a standard to commercial RCRA–C facilities be an important consideration? How might this affect DOE disposal policies? How do disposal facilities view the need for a permit modification or AEA license?

J. Background Information Regarding LAMW

In 1976, RCRA authorized us to regulate hazardous waste from ''cradle to grave.'' This includes the minimization, generation, transportation, treatment, storage, and disposal of hazardous waste. The definition of solid waste in the RCRA legislation specifically excludes source, special nuclear, or byproduct material as defined by the AEA of 1954, as amended. In the 1984 Hazardous and Solid Waste Amendments to RCRA, Congress established land disposal restrictions (LDR) for hazardous waste and directed us to establish treatment standards for hazardous waste. Hazardous waste has been prohibited from land disposal unless treated to our established standards in 40 CFR part 268.

Mixed waste is regulated under multiple authorities: by RCRA, as implemented by us or authorized States for hazardous waste components; and by the AEA of 1954, as amended, for radiological components as implemented by either the DOE (for radioactive waste subject to DOE's AEA authority), or the NRC or its Agreement States (for all other mixed waste). DOE is responsible for the disposal of, but does not regulate, commercial Greater-than-Class C mixed waste. Under the AEA, EPA has the authority to issue certain generally applicable environmental standards.

Low-activity mixed waste is a special class of mixed waste. It may be viewed as waste that meets the definition of hazardous waste under RCRA and, under AEA, is LLRW containing ''low'' radionuclide concentrations. In this context, ''low'' concentrations are concentrations no higher than Class A LLRW, as defined in 10 CFR 61.55.[21]

1. Commercial LAMW

The radioactive component of mixed waste, and by extension, LAMW is regulated by either the Nuclear Regulatory Commission and the Agreement States (for commercial facilities) or the DOE (for DOE's energy and defense related activities). Commercially-generated (*i.e.*, non-DOE) LAMW is produced across the country, at nuclear power plants, fuel cycle facilities, pharmaceutical companies, medical and research laboratories, universities, and other facilities. Processes such as medical diagnostic testing and research, pharmaceutical and biotechnology development, and generation of nuclear power result in some mixed waste. The last comprehensive evaluation of mixed waste was published in a 1992, known as the joint EPA and NRC ''National Profile on Commercially Generated Low-Level Radioactive Mixed Waste'' (NUREG/CR 5938). Accordingly, 3,950 cubic meters of low-level radioactive mixed waste was generated in the United States in 1990, while another 2,120 cubic meters were in storage. Of the 3,950 cubic meters generated in 1990, about 72% were liquid scintillation counting fluids, 17% were other organics and aqueous liquids, 3% were metals, and 8% were ''other'' waste. Approximately 3000 small volume generators were storing mixed waste. A report published by DOE in 1995 revisited the issue of mixed waste. Using the data from the ''National Profile,'' this report examined the variety of options available for managing commercially-generated mixed waste and reached the following conclusions (''Mixed Waste Management Options: 1995 Update,'' DOE/LLW–219):

- Most, but not all, mixed waste can be treated by commercially available technology.
- Approximately 128 cubic meters per year of commercially generated waste volumes would require disposal

[21] Note that LLRW is defined by exclusion, that is, by what it is not. For example, the Low-Level Radioactive Waste Policy Act of 1980 defines LLRW as radioactive material that is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the AEA (*i.e.*, uranium or thorium mill tailings).

in a jointly regulated mixed waste disposal facility.

More recent information reported in our advance notice of proposed rulemaking regarding increased flexibility in RCRA regulations for storing mixed low-level radioactive waste (64 FR 10064, March 1, 1999) confirms the continued storage of mixed waste due to lack of treatment and reasonable disposal options. In particular, the Electric Power Research Institute documented such problems for certain mixed waste from nuclear power plants. EPA visits to nuclear power plants, hospitals, and universities in 1998 found small amounts of mixed waste with no commercially available treatment technologies, and our discussions with the American Chemical Society and the International Isotope Society further highlighted the difficulty of treating and/or disposing of certain mixed waste.

2. DOE LAMW

The DOE also continues to generate mixed waste (and therefore LAMW). In fact, DOE has a legacy of environmental and process wastes that require disposal. For many decades, many DOE sites did not dispose of their waste streams in a timely manner, allowing these wastes to accumulate in storage. DOE has indicated that continued indefinite storage of such wastes is unacceptable; however, continued storage in many cases was deemed necessary because appropriate treatment methods were not available. The Federal Facilities Compliance Act of 1992 recognized this situation and directed DOE to develop plans and timetables for treatment and disposal of mixed waste at its sites. DOE determined that it was necessary to conduct a programmatic review of waste management activities throughout the DOE complex. As a result, DOE has reviewed its options for managing of different categories of radioactive waste, including LLRW and MLLW. (*See* the ''Final Waste Management Programmatic Environmental Impact Statement (WM PEIS),'' DOE/EIS–0200F, May 1997.)

The WM PEIS evaluated various options for managing and disposing of MLLW and identified preferred alternatives, narrowing the list of sites that would be capable of treating or disposing of MLLW. In evaluating the role of the various DOE sites within each option, the following criteria were applied to the sites in question (WM PEIS Summary, Table 1.6–1):

- Consistency
- Cost
- Cumulative impact
- DOE mission
- Economic dislocation
- Environmental impact
- Equity
- Human health risk
- Implementation flexibility
- Mitigation
- Regulatory compliance
- Regulatory risk
- Site mission
- Transportation

DOE worked with affected States, stakeholders, and Tribal Nations to provide input towards qualitative criteria such as equity and stakeholder acceptance.

On February 18, 2000, DOE announced its record of decision regarding the treatment and disposal of MLLW. Accordingly, MLLW will be treated on a regional basis at the Hanford Site, the Idaho National Engineering and Environmental Laboratory, the Oak Ridge Reservation, the Savannah River Site, or on-site; MLLW will be disposed at the Hanford Site and the Nevada Test Site. (See ''Record of Decision for the Department of Energy's Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site,'' 65 FR 10061, February 25, 2000.) DOE has indicated that 43,000 cubic meters of MLLW from waste management operations will require off-site disposal, considering both waste in storage and waste to be generated over the next 20 years. While the above referenced record of decision did not address the use of commercial disposal facilities, DOE's decision does not preclude use of commercial treatment or disposal facilities for DOE's MLLW. DOE has estimated that approximately 22,000 cubic meters of MLLW from waste management operations may be considered for commercial disposal facilities. In addition, 53,000 cubic meters of MLLW from environmental restoration activities may be considered for commercial disposal facilities. Significant additional volumes of MLLW may also be generated from future cleanup activities. There is no breakdown of how much of this waste may be ''low activity'' MLLW. (See ''Information Package on Pending Low-Level Waste and Mixed Low-Level Waste Disposal Decisions to be made under the Final Waste Management Programmatic Environmental Impact Statement,'' U.S. Department of Energy, September 1998.)

K. Questions for Public Comment: Disposal Concept for LAMW

We request public comment on a number of aspects related to this action. In addition to the questions raised earlier in this action, the questions below generally highlight areas in which there is a lack of information or there are a variety of approaches that may prove viable. You are not limited to responding to the specific questions below; as always, you are welcome to comment on any aspect of this document or questions raised earlier in the text. In particular, we ask:

1. Is our description of the problems associated with mixed waste accurate? For example, what is the present status regarding the ability to dispose of low-activity mixed waste in a protective and cost-effective manner? Are some generators, such as medical or other researchers, using less current practices to avoid generating mixed waste? (section II.B.1)

2. What new information is available concerning the characteristics, treatment, storage, and disposal of LAMW? (II.A.1)

3. Is the approach we have outlined to allow disposal of LAMW in RCRA–C facilities viable? Would it help to alleviate generators' concerns?

4. What roles should EPA and NRC take in further developing this approach? Are there other actions that can be taken to minimize dual regulation or facilitate permanent disposal of LAMW? (II.A.3)

5. Are radionuclide concentration limits adequate for limiting the impacts from LAMW?

6. What concentration limits would address a significant proportion of your mixed waste? (II.A.1)

7. Should any rule or guidance apply only to commercial RCRA–C disposal facilities (roughly 20 operating)? To privately-owned facilities? To DOE facilities? (II.B.1)

8. Should a rule address disposal of low-activity material in RCRA–D (solid waste) facilities? (II.A.2)

9. Should such a rule apply to DOE wastes? Are there special issues associated with DOE waste (*e.g.*, characterization, knowledge of historic generating processes, volumes)? (II.G)

10. What additional requirements would be necessary for RCRA facilities (*e.g.*, related to post-closure care, land ownership, financial assurance, monitoring and corrective action)? (II.C.4)

11. Are the exposure scenarios we have outlined adequate? Is there a method other than modeling that could effectively determine the protectiveness of RCRA–C disposal of LAMW? (II.D.3.a, b)

12. What is the appropriate way to select site data for modeling? What level

of conservatism is appropriate? (II.D.3.b.i)

13. Should disposal facility operators have the opportunity to calculate site-specific radionuclide concentration limits? For mobile radionuclides only? Based on specific practices to protect workers? (II.D.3.b.i, H.1)

14. What is the appropriate way to assess long-term protection? Is dose the appropriate measure? Is risk? Based on annual or lifetime exposures? What about radionuclide concentrations in the environment (as a basis for modeling)? (II.D.5)

15. What is the appropriate level of protection to derive waste concentrations (in terms of risk or dose)? Should the same level apply to all exposure scenarios? (II.D.5)

16. Should such a standard have different waste concentration limits for ''dry'' sites versus ''wet'' sites? What criteria should we use to differentiate between ''wet'' and ''dry'' sites? Is there another generic way to distinguish ''better'' sites? (II.D.3.b.ii)

17. Should we establish minimum site suitability requirements? What should they be? How would your suggested requirements make LAMW disposal more protective? (II.D.3.b.ii)

18. What is the appropriate timeframe for modeling? (II.D.3.b.iii)

19. How should we evaluate a post-closure disturbance of the disposal site? (II.D.3.f)

20. To what extent should bulk waste be included in this approach? As a generator, is bulk waste a significant proportion of your waste? (II.D.3.d)

21. Should such a rule require a specific waste form, such as solidified/stabilized? Should different standards apply to different waste forms, or should a generator be able to demonstrate the performance of a particular waste form? Should containers be required? Should there be special conditions for bulk waste? (II.D.4.b)

22. What types of solidification/stabilization would be most effective at containing radionuclides? What are the relative costs of these methods? (II.D.4.b)

23. Is the Class A maximum an appropriate additional control on radionuclide concentrations? What other methods might we use? (II.D.4.a)

24. Should a curie or volume limit apply to each disposal facility, in addition to radionuclide concentration limits? To each disposal cell? To individual radionuclides? An overall limit, or an annual limit? (II.D.4.c)

25. Is the ''unity rule'' an appropriate method to limit exposures? Under what circumstances might it not be appropriate? How else might we achieve the same goal? (II.D.4.d)

26. How should the chemical toxicity of radionuclides, particularly those elements not addressed by RCRA regulations (*e.g.*, uranium), be considered in developing waste concentrations? (II.D.5)

27. What regulatory approach should NRC take? Are there particular advantages or disadvantages to each? What aspects of LAMW disposal need special consideration? (II.F)

28. How would States and facilities implement the rule? What concerns would States need to have addressed? (II.H)

29. RCRA requires ground-water monitoring for hazardous constituents. How should ground-water protection be addressed for radionuclides?

30. What factors would States, generators, and disposal facilities consider in supporting or opposing (choosing not to use) a standard for LAMW disposal? How would you characterize your interest in this approach? What would increase or decrease your interest?

31. Is it appropriate for the generator to be responsible for documenting compliance with waste form requirements? What is the best way to ensure that radionuclide concentrations in waste comply with a standard? How might disposal facility sampling procedures need to be modified? (II.C.2, H.2.b)

32. What level of public participation is appropriate? (II.H.2.a)

33. Should volume averaging or ''blending'' be allowed? Under what conditions? (II.H.2.b)

34. How will LAMW disposal facilities be affected by the regional low-level waste compacts? (II.H.3)

35. Do you anticipate cost savings if the approach in this document were to be implemented? Where would you expect to see cost savings?

III. Is It Feasible To Dispose Other Low-Activity Radioactive Wastes (LARW) in Hazardous Waste Landfills?

Aside from low-activity mixed waste, there are a variety of other wastes with ''low'' concentrations of radionuclides, which are either unregulated or are subject to an inconsistent or uncertain regulatory framework. While some of these other low activity wastes may be mixed waste, we are widening the scope of consideration here to include both mixed and non-mixed waste within each of these categories. Wastes included in this category are residuals from the processing of uranium or thorium ore that NRC has determined are not subject to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (we refer to these residuals in this document as ''pre-UMTRCA byproduct material,'' much of which is subject to remediation under the Formerly Utilized Sites Remedial Action Program (FUSRAP)), certain categories of Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) wastes, and Atomic Energy Act (AEA) radioactive waste presently exempted from regulation.

A. How Would the Proposed Disposal Concept Apply to Other Low-Activity Radioactive Wastes?

1. From a Technological Perspective

The RCRA–C technology itself offers no barriers to extending the disposal concept to other low-activity radioactive wastes. There is no physical difference between a radionuclide in low-activity mixed waste and the same radionuclide in pre-UMTRCA byproduct material or TENORM waste. It may in fact be easier to assess the protectiveness of the landfill technology for pre-UMTRCA byproduct material or TENORM wastes, as they will contain a much narrower range of radionuclides (primarily uranium, thorium, and radium, with daughter products), and lesser amounts of other components that could have an effect on the physical and chemical behavior of the radionuclides in the disposal system, than will LAMW. Waste form and volume issues may be more important for these other low-activity waste streams in assessing their behavior in the disposal system. From a safety perspective, the RCRA-C disposal system should be no less effective for these other waste streams than for LAMW.

2. Pre-UMTRCA Byproduct Material

The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) explicitly extended AEA jurisdiction to waste from the processing of uranium or thorium ore (''byproduct material'' newly defined in section 11e.(2) of the AEA) and designated NRC to regulate this material at active processing sites (see section III.D, ''Background Information Regarding Other LARW'' for more detail). ''Pre-UMTRCA'' byproduct material is physically and chemically very similar to 11e.(2) byproduct material regulated by NRC pursuant to its responsibilities under UMTRCA. Pre-UMTRCA byproduct materials are residuals from ore processing activities mixed with soil or residual contaminants of building debris. They comprise the majority of the material being remediated from commercial and

residential properties under the Formerly Utilized Sites Remedial Action Program (FUSRAP) and are also found at some Superfund sites. Pre-UMTRCA material has generally been disposed in bulk and shipped by rail car to licensed or permitted disposal facilities. Most is relatively low-activity, because it resulted from the extraction of uranium or thorium from ore material. It has been disposed of at a limited number of RCRA Subtitle C disposal facilities having State permits that allow acceptance of low concentrations of certain radioactive materials (equating generally to ''unimportant quantities'' as defined by NRC). Materials with concentrations exceeding State RCRA permit conditions have been disposed in NRC or Agreement State licensed facilities.

3. TENORM

''Technologically Enhanced'' Naturally Occurring Radioactive Material is material (whether as a waste or product) in which the natural radioactivity has been concentrated or the potential to expose humans has been increased, generally through human activity (TENORM does not include material in its natural setting, such as soil or rocks that emit ''background'' radiation). TENORM waste can take a variety of forms, including soil, pipe scale, sludges from water treatment, and residues from processing of mineral ores. As the name suggests, some TENORM wastes are highly radioactive because the processes that produce them tend to concentrate the radionuclides. A number of RCRA Subtitle C disposal facilities accept certain types of TENORM waste (*e.g.*, commercial facilities in California, Idaho, and Texas). Only wastes that meet the radionuclide concentration limits derived for the RCRA-C disposal option described here would be candidates for disposal under that approach. Higher-concentration TENORM wastes would not be included.

4. Low-Activity LLRW/Source Material Exempted by NRC

Some wastes under the AEA are exempted from regulation. In particular, NRC deferred ''unimportant quantities'' of source material containing less than 0.05 % by weight uranium or thorium, from its regulation. Certain consumer products and some mining wastes may contain uranium or thorium originating from ores not meeting the 0.05% criterion. For example, zircon contains minute quantities of uranium and thorium and is used as a glaze for ceramics and metal molds. Thorium is used to make a more dense glass for prescription glasses. Uranium or thorium may be a side product emanating from certain phosphate extraction operations or rare earth mining.

Low-level radioactive waste that is not mixed waste currently has several disposal options, as noted in section II.H.3 above. However, generators have limited access to one of those facilities, and access to another facility will be limited in a few years. It might be advantageous to provide additional disposal options for low-activity LLRW that may not require the extensive radiation controls of 10 CFR part 61.

As previously noted, NRC held a workshop on May 21–22, 2003, to discuss alternatives for safely controlling solid materials that have no, or very small amounts of, radioactivity. One alternative for that material is placement in a RCRA Subtitle C or RCRA Subtitle D disposal facility. Therefore, some of the issues discussed in that workshop may be similar to some of the approaches discussed in this ANPR. Background materials (including the information collection efforts conducted by NRC) and current activities (including recent documents issued and plans for stakeholder input), as well as transcripts of the workshop, can be found at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=SM_RFC&st=ipcr.*

B. What Legal and Regulatory Issues Might Affect Applying the RCRA–C Disposal Concept to Other Low-Activity Radioactive Wastes?

1. Lack of Federal Regulation

As noted above, we believe it is reasonable, given the similarity in radiological characteristics and general similarity in physical attributes (*i.e.*, large volume), to evaluate the applicability of our low-activity mixed waste disposal concept to these other low-activity radioactive wastes. To the extent that such a regulation could cover a large percentage of low-activity pre-UMTRCA byproduct material and TENORM wastes, clarity and consistency in regulation would be achieved for wastes now addressed by a patchwork of regulations. Some of these waste streams are not currently regulated by Federal agencies (with the exception of FUSRAP or other waste generated from CERCLA site cleanups, where the Record of Decision specifies acceptable disposal), and there is no uniform State approach to regulating these wastes. Unfortunately, it is not clear at this time what single Federal authority might be invoked. For example, NRC has stated that pre-UMTRCA byproduct material and TENORM wastes do not fall under the purview of NRC's AEA authority. (*See, e.g.*, ''Issuance of Director's Decision Under 10 CFR 2.206,'' 65 FR 79909, December 20, 2000.) The logical implication of NRC's position is that the exclusion of ''source, special nuclear, and by-product material as defined by the Atomic Energy Act of 1954'' from the definition of ''solid waste'' under RCRA does not apply to pre-UMTRCA byproduct material that does not otherwise contain source material or would otherwise fall within NRC's AEA authority (*i.e.*, pre-UMTRCA byproduct material would be identical to TENORM in that regard). (*See* 40 CFR 261.4(a)(4).) Thus, EPA could perhaps use its RCRA authority to address these waste streams. However, while these wastes likely fall under RCRA jurisdiction by virtue of being ''solid waste'' (if not subject to AEA), there is no clear mechanism to regulate them under Subtitle C. There is no RCRA characteristic for radioactivity, and many mineral processing wastes are specifically excluded from regulation as hazardous (40 CFR 261.4(b), ''solid wastes which are not hazardous wastes''). While non-hazardous waste can be disposed of in Subtitle C facilities, disposal standards associated with non-RCRA hazardous properties of the waste (in this case, radioactivity) would generally be the purview of State authorities.

2. How They Are Regulated Now

a. Pre-UMTRCA Byproduct Material (FUSRAP). Because concerns over disposal of pre-UMTRCA byproduct material have been most closely associated with FUSRAP, we are focusing our attention on that program. FUSRAP was created to evaluate and remediate wastes generated as a result of activities of the Manhattan Engineer District and the Atomic Energy Commission beginning in the 1940s through the 1960s. These activities were related to the development of nuclear weapons. These wastes were first managed by the Atomic Energy Commission, then, in 1975 by the Energy Research and Development Administration, until 1997 by the Department of Energy, and since 1997 by the U.S. Army Corps of Engineers (USACE). USACE now manages such waste under CERCLA and internal guidance directives.

There has been some discussion of the legal authority under which such wastes should be managed. (See ''Corps of Engineers'' Progress in Cleaning Up 22 Nuclear Sites,'' GAO/RCED–99–48,

February 1999.) Following transfer of FUSRAP to the Corps of Engineers, USACE requested a determination from NRC regarding the regulatory requirements for off-site disposal of waste generated through site cleanups. NRC determined that the largest-volume waste stream at FUSRAP sites, wastes that resulted from the extraction of uranium or thorium from ore material, was outside its jurisdiction because of the circumstances under which it was generated (pre-UMTRCA). NRC was later petitioned to review its position (February 24 and March 13, 2000). NRC reaffirmed its position in a 2000 Director's Decision (65 FR 79909, December 20, 2000). As a result, the off-site disposal of the bulk of waste from FUSRAP cleanups is unregulated at the Federal level except through the Superfund program (although USACE uses the CERCLA process at all FUSRAP sites, relatively few of the sites have actually been placed on the National Priorities List).

The Corps of Engineers has pursued a disposal program that includes use of RCRA Subtitle C facilities for its low-activity waste, with higher-activity waste sent to AEA-licensed facilities. Under USACE policies applicable to FUSRAP, appropriate State authorities are requested to verify approval of acceptance of FUSRAP materials prior to disposal. States have varied in their responses to USACE's disposal efforts, with some being receptive to RCRA facilities accepting waste and others opposing it. USACE plans to continue using Subtitle C facilities as a disposal option.

b. TENORM. Many TENORM wastes are also relatively low-activity. Many of these wastes are regulated by States. Wastes with similar radiological characteristics may be managed more or less rigorously from State to State. Some wastes are regulated primarily for chemically hazardous components. Some wastes are not regulated with regard to their radioactive content. Of course, in many instances, there is a lack of information on the radiological characterization of a given TENORM waste and undoubtedly, this has contributed to today's inconsistent regulatory framework. Examples of TENORM wastes include sludges and resins resulting from treating ground water for drinking water, scales and sludges arising from oil and gas production, tailings, slag, or residues from the mining and processing of a variety of ores, and the overburden remaining from the mining of uranium ores to name a few. (Uranium mines are not covered under the AEA. Rather, airborne radon emissions from underground uranium mines are addressed under the Clean Air Act. (*See* subpart B of 40 CFR part 61, 54 FR 51654, December 15, 1989.)) Ideally, wastes of similar characteristics presenting similar risks might be managed in a similar fashion.

Although these wastes include a wide variety of waste categories, some delineated by more or less clear institutional boundaries, there are some common traits that may allow the development of a common strategy for management and disposal. Many of these wastes include radioactive uranium and thorium, and/or the daughters of the radioactive isotopes of uranium or thorium, respectively. Many of the wastes are in bulk form, whether it be tailings, or sludge, or residues that might infer a similar management strategy, given a similar range in volumes. We welcome comment on appropriate risk-based strategies to manage and dispose of reasonably similar wastes in a similar manner. For example, would it be better to focus on wastes that are relatively well-controlled but may be somewhat higher in activity, such as drinking water treatment residues, or on larger volume wastes, such as soils, that have the potential for wider dispersal in the environment and subsequent exposures to the public? Which wastes are most difficult to manage? Which pose the greatest risks?

3. Existing Federal Regulations (Low-Activity LLRW)

From the perspective of the Atomic Energy Act, low-activity mixed waste is regulated identically to other forms of low-level radioactive waste. Some LAMW may be identical in radiological characteristics to low-activity LLRW. Logically, it is difficult to argue that the presence of additional hazards (*i.e.*, chemically hazardous material) makes the RCRA-C technology suitable for LAMW but unsuitable for non-mixed low-activity LLRW. However, there are currently several commercially operating disposal facilities capable of accepting low-activity LLRW (though generators will have limited access to two of the three commercial facilities), and the need for additional disposal options is not clear at this time. Nevertheless, we request comment on whether our rule should address non-mixed low-activity LLRW (these wastes would be subject to the same restrictions placed on LAMW in deriving concentration limits, such as using the Class A maximum values as an upper benchmark).

4. Potential for a New ''Class'' of Disposal Facilities

While we and NRC agree that RCRA Subtitle C landfills could offer appropriate protections for disposal of low concentrations of radionuclides, neither agency intends at this time to create a new regulatory structure comparable to the existing RCRA or LLRW requirements. Rather, the intent is to apply the necessary elements of radiation protection to the hazardous waste framework. In dealing with low-activity mixed waste, we believe this approach is sensible, as individuals disposing of mixed waste must comply with the requirements for both hazardous and low-level radioactive waste. Further, compared to the volume of materials disposed of in RCRA facilities, LAMW volumes are relatively small, even when considering DOE LAMW, so disposal capacity should not be excessively given over to LAMW. However, in extending this approach to pre-UMTRCA byproduct material, TENORM, or non-mixed low-activity LLRW (including that from DOE), we must recognize the potentially large volumes of waste that could be accepted at Subtitle C facilities. It is possible that facilities would apply to be sited and permitted under Subtitle C based on the prospect of taking low-activity waste that is not regulated under Subtitle C (or subject to RCRA at all), but may in fact be predominantly AEA material. This would not necessarily be inappropriate, since the intent is to demonstrate that the Subtitle C technology would be adequately protective in such a situation, but we believe it important to acknowledge the possibility. We request comment on this issue, and how we might alleviate any concerns.

C. Request for Information: Other LARW

To assist us in understanding the present situation regarding Pre-UMTRCA byproduct material, TENORM wastes, and other low activity radioactive wastes we request information to clearly understand the present regulatory framework associated with each waste and to provide more complete waste characterization. Information on these wastes has been produced by industry, States, Federal agencies, and academic institutions and it is important to garner up to date information to better guide our deliberations for future efforts. Along these lines, we welcome the following types of information:

- *Regulatory Requirements:* What are the significant regulatory requirements applicable to the waste in question? We recognize that a given waste might be

covered under regulations issued by various levels of government (Federal, State, local) and may vary among jurisdictions (*i.e.*, from State to State).

• *Waste Generation, Treatment, and Disposal:* For individual waste types or categories of waste, we request current waste generation rates and storage, treatment, and disposal practices. Data on types of waste generated, RCRA codes, radionuclide concentrations, storage and treatment techniques, and disposal practices for these waste types or categories of waste, and data on waste volumes before and after treatment would be very useful and informative. In terms of waste concentrations, information that portrays the amount of waste within different concentration ranges would be most useful.

• *Cost Data:* The costs associated with the management and disposal of the waste in question: This could include storage costs, costs of sampling and analysis for compliance with regulatory requirements, the costs for meeting treatment standards, pre-treatment and treatment costs (by method), packaging and transport costs, disposal costs, and reporting and recordkeeping costs.

D. Background Information Regarding Other LARW

1. Pre-UMTRCA Byproduct Material (and FUSRAP)

The processing of ores to extract uranium or thorium (milling) generates large volumes of waste material (tailings). These tailings resemble fine, sandy soil and are generally relatively low in activity because the primary source of radioactivity has been reduced. However, because of the large volumes generated, if they are not properly controlled, these materials can present a long-term hazard to human health and the environment. In addition, the milling process can introduce chemical hazards into the waste. The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) was passed to address management of tailings (11e.(2) byproduct material) and remediation of milling and tailings storage sites. These responsibilities were divided between DOE (for inactive sites) and NRC (for active sites). EPA was directed by UMTRCA to establish radiation protection standards to be implemented by DOE and NRC. These standards are found at 40 CFR part 192 (''Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings'').

The Formerly Utilized Sites Remedial Action Program (FUSRAP) was established as a program under the former Atomic Energy Commission in 1974. The original objective of this program was to identify, investigate, and take appropriate cleanup action at contaminated sites associated with the nation's early atomic weapons program. During the 1940s through the 1960s, the Manhattan Engineer District and later, the Atomic Energy Commission (AEC) used a variety of sites across the United States to process and store uranium and thorium ores for nuclear weapons. In the 1970s, the AEC evaluated these old weapons production sites to determine the risks to human health and the environment, taking into account new health and environmental standards. In 1975, this program was transferred to the newly formed (from the AEC) Energy Research and Development Administration, and subsequently in 1977 to its successor, DOE. Of the 400 sites that were revisited, 46 required some type of cleanup. DOE initiated cleanups in 1979 and completed cleanup of roughly half of the 46 sites by 1997. DOE managed tailings from FUSRAP cleanups in a manner consistent with its responsibilities under UMTRCA, although the FUSRAP sites were not among those identified by UMTRCA. Late in 1997, Congress transferred responsibility for FUSRAP to the U.S. Army Corps of Engineers. At the request of USACE, NRC considered its jurisdiction over pre-UMTRCA byproduct tailings generated by FUSRAP cleanups. NRC determined that its jurisdiction, as defined by UMTRCA, did not extend to tailings generated prior to passage of UMTRCA if the generating process had not been licensed by NRC (or its predecessor, the AEC).

2. TENORM

Numerous activities produce TENORM wastes, including mining (coal, metals, rare earths, and uranium), fertilizer production, oil and gas production, incorporation into consumer products, and treatment of ground water for drinking water among others. TENORM can be found in all 50 States. Total amounts of TENORM wastes produced in the United States annually may be in excess of 1 billion tons. In many cases, the levels of radiation are relatively low and dispersed in large volumes of waste. This causes a dilemma because of the high cost of disposing of radioactive waste in comparison with (in many cases) the relatively low value of the product from which the TENORM is separated. There are few disposal locations that can accept radioactive waste from licensed activities, and not many more that can take certain types of TENORM. Large quantities of TENORM wastes are currently undisposed and may be found at many of the thousands of pre-1970s abandoned mine sites and processing facilities around the nation. Of particular concern are the isotopes of uranium and thorium. Radium-226, a daughter of the decay of uranium-238, is troublesome because of its long half life (about 1600 years) and its relatively high radiotoxicity. Additional detailed information on TENORM may be found on our Web site at *http://www.epa.gov/radiation/tenorm/.* EPA has developed information on the categories of TENORM over the last fifteen years from our own independent studies, various rulemakings, data provided by States, and studies performed by industry.

3. Low-Activity LLRW/Source Material Exempted by NRC

Under the AEA, source material is uranium or thorium in any physical or chemical form. NRC has traditionally regulated source material if it contains one-twentieth of one percent (0.05%) or more by weight of uranium, thorium, or any combination of these two. Some mining and mineral extraction processes may also result in the production of uranium, or thorium, at concentrations under the NRC's threshold for regulation and hence, not be regulated under the AEA. Such low-activity source material may result from refining ores mined for other precious metals, rare earths, or phosphate processing. This low-activity source material may be regulated with regard to its chemical characteristics, rather than any radiological hazard associated with the commingled uranium or thorium. NRC has determined that ores containing less than 0.05% uranium or thorium by weight are not considered source material (10 CFR 40.4) and may be labeled as NORM or TENORM. AEA does not provide authority to regulate NORM or TENORM.

As described in section II.D.4.a, NRC classifies commercially generated LLRW in 10 CFR 61.55 as Class A, B, C, or Greater-Than-Class C (GTCC). All LLRW classes must meet minimum waste characterization requirements specified in § 61.56(a). Among these requirements, waste must be a solid with minimal free standing liquid, not explosive, pyrophoric, or capable of generating toxic gases; any hazardous, biological, pathogenic, or infectious waste must be treated to reduce to the maximum extent practicable these non-radiological hazards. Tables 1 and 2 of § 61.55 are used to determine waste class based on radionuclide content. Class A waste contains the lowest

concentrations of short-lived and/or long-lived radionuclides. Class B waste contains low concentrations of long-lived radionuclides but larger concentrations of short-lived radionuclides; in addition to the requirements of § 61.56(a), Class B waste must meet the stability requirements of § 61.56(b). Class C waste contains the largest concentrations of long-lived radionuclides and/or short-lived radionuclides that are acceptable for near surface disposal, meets the same waste characterization requirements as Class B waste (minimum requirements and stability requirements), plus Class C waste requires additional measures to protect against inadvertent intrusion as listed in § 61.52(a). LLRW whose concentrations exceed the highest values in Table 1 or Table 2 is GTCC and not generally suitable for near-surface disposal.

Numerous studies and surveys have shown that Class A comprises the largest volume of LLRW compared to Classes B, C, and GTCC. For example, a nationwide assessment of LLRW received at commercial disposal facilities revealed that 97.6% (by volume) of the LLRW disposed was Class A. Class B and Class C comprised only 1.5% and 0.9%, respectively. (''1998 State-by-State Assessment of Low-Level Radioactive Wastes Received at Commercial Disposal Sites,'' May 1999, DOE/LLW–252.) For example, the 1996 survey of LLRW shipped from Connecticut to disposal facilities reports that Class A contributed only 8.9% of the total radioactivity in LLRW disposed in 1996; in 1999, Class A LLRW represented only about 2% of the total activity. For the period 1995–1999, Class A LLRW made up about 14% of the total activity. (''Low-Level Radioactive Waste Management in Connecticut—1996,'' prepared by the Connecticut Hazardous Waste Management Service, December 1997; figures for 1999 can be found in the October 2000 report.) A comprehensive analysis of the nationwide characteristics of commercial LLRW shipped for disposal between 1987 and 1989 indicated that Class A represented from 3.3% to 10.9% of the total radioactivity in LLRW disposed in any given year and 96.4% to 97.4% of the total volume in any given year. (''Characteristics of Low-Level Radioactive Waste Disposed During 1987 through 1989,'' NUREG–1418, December 1990.) Thus, while Class A LLRW may predominate the volume of waste sent to LLRW disposal facilities, Class A typically contributes only a small percentage of the total radioactivity disposed. Class A LLRW is limited to the lowest concentrations of short-lived and long-lived radionuclides in the NRC's waste classification system in 10 CFR 61.55, and much of the waste in Class A LLRW is incidentally contaminated trash. Class A LLRW with radionuclide concentrations at some fraction of the Class A limits, so-called low-activity LLRW may represent an acceptable candidate for disposal by alternative means, such as disposal in an RCRA Subtitle C landfill.

4. Decommissioning Wastes

When facilities that use or process radioactive materials are closed, they go through a process of decontamination and decommissioning to reduce the amount of residual radioactivity left at the site. The extent and type of contamination depends on the kind of work done at the facility, the length of time the facility operated, and the operational practices employed at the facility. For example, facilities that processed uranium or thorium ore, such as those involved in FUSRAP, will have a relatively narrow range of radionuclides (uranium, thorium, radium, and their decay products), but also tend to have contaminated soils from managing the processing wastes. Nuclear power plants, on the other hand, typically have to address a much wider spectrum of radionuclides generated by the fission process, but much waste will primarily consist of contaminated equipment. Because of its widely varied operations, the scope of contamination at DOE facilities and sites is likely to encompass that found at commercial facilities. The decontamination process also produces waste, such as the removal of surface contamination from buildings using high-pressure sprays.

Waste volumes from decommissioning vary widely. Some contaminated facilities lie unused for years before decommissioning, and a number of DOE sites are being evaluated for accelerated decommissioning schedules. The scope of waste from decommissioning can change during the process. For example, some buildings that are expected to be lightly contaminated, and therefore amenable to surface decommissioning, can be found to be more extensively contaminated, thereby affecting the decommissioning procedure. Similarly, soil contamination is often found to be more prevalent than anticipated. Another uncertainty at present surrounds the decommissioning of nuclear power plants. A few years ago, it appeared that nearly all reactors would be decommissioned at the end of their current licenses (a few have decommissioned in the past decade). Now, however, some utilities are pursuing license renewals. Assuming they operate to the end of the renewed license, that would push the major wave of decommissioning farther into the future.

In addition, technological advances in either decommissioning practices, radioactive waste treatment, or waste disposal could significantly affect the volumes and characteristics of these wastes. While we can say with certainty that some, and possibly a large percentage, of these wastes would be ''low-activity,'' we have no way of projecting the proportion that would be mixed waste or the actual waste characteristics. For purposes of modeling, we request information that would help us describe the wastes resulting from decommissioning.

E. Questions for Public Comment: Disposal of Other LARW in Hazardous Waste Landfills

1. Should a rule include pre-UMTRCA byproduct material, such as that generated by FUSRAP cleanups? Are there remaining public health or environmental concerns over management of this material? (section III.B.2.a)

2. What authorities are most appropriate to regulate disposal of pre-UMTRCA byproduct material?

3. Are there significant sources of pre-UMTRCA byproduct material, other than FUSRAP cleanups?

4. How does pre-UMTRCA byproduct material resemble or differ from 11e.(2) byproduct material regulated by NRC?

5. What Federal or State authorities presently regulate TENORM? What Federal or State authorities might be used to regulate TENORM?

6. What regulatory standards do State authorities apply to TENORM disposal? How might a rule simplify TENORM disposal?

7. What approach to managing similar TENORM wastes is most appropriate? Are there particular waste streams that need immediate attention (based on risk or occurrence)? (III.B.2.b)

8. Should volume averaging or ''blending'' be allowed for TENORM and other LARW? Under what conditions?

9. Should a rule include low-activity LLRW that is not mixed waste? What about source material exempted by NRC? Under what conditions? (III.B.3)

10. What issues are associated with siting new disposal facilities for these other LARW? How might they be alleviated? (III.B.4)

11. Would there be special concerns about waste from facility decommissioning? Would such concerns depend on the type of facility being decommissioned? Are there credible projections of the volumes and types of waste expected to be generated when decommissioning large numbers of nuclear reactors? (III.D)

IV. What Non-Regulatory Approaches Might Be Effective in Managing LAMW and Other Low-Activity Radioactive Wastes?

Many of the wastes just described appear to share similar physical and radiological characteristics. This might imply that a common approach, or a limited number of approaches, could effectively manage and dispose of such wastes. Such an approach could eliminate the need for separate actions addressing individual waste streams. The real question is to decide which approach (or approaches) may be most promising in terms of practicality, legal applicability, cost-effectiveness, and risk reduction potential. In order to develop meaningful approaches, it is necessary to obtain the advice of potentially affected stakeholders. We therefore welcome comment on some of the possible approaches to managing and disposing of these other categories of low-activity waste. We also welcome advice on new or innovative approaches that are not described below.

A. General Discussion

Our conceptual approach to disposal of low-activity mixed waste relies on regulatory actions by us and by NRC, although the envisioned regulatory action would be permissive (that is, it would allow actions not possible under the existing regulatory structure) and LAMW generators or disposal facilities could choose not to take advantage of the increased disposal flexibility. By contrast, as discussed above, some other low-activity wastes might not be as clearly addressed by us through regulatory action. However, we believe it is in the public's interest to address the issues presented by disposal of these other low-activity wastes. Therefore, we are considering how best to accomplish this through actions that do not involve rulemakings or other regulatory methods. These non-regulatory approaches may also be effective to some extent in addressing issues related to LAMW disposal.

1. Advantages and Disadvantages of Non-Regulatory Approaches

A prime complaint about regulatory programs is that they are too prescriptive and limit the flexibility of the regulated parties in meeting goals. This can be true, and to some extent they also limit the flexibility of regulatory agencies in improving the effectiveness of the program, because modifying a regulatory program takes significant time and resources. In addition, enforcement actions, while necessary to maintain the integrity of the program, by their very nature often result in adversarial relationships with limited trust. In short, the burden of regulatory programs to all parties can sometimes outweigh the positive benefits.

In a non-regulatory program, the regulatory agency and regulated community typically work more closely together to achieve a common goal. In many cases, the regulated parties participate in designing the program. Non-regulatory programs are usually less prescriptive, offering flexibility to participants to meet goals in the way they find most effective. In turn, the regulatory agency focuses less on strict compliance and more on technical assistance, training, guidance, and encouraging use of innovative technologies. The flexibility of such programs can make them easier to modify as found necessary. Compliance with regulatory requirements is still necessary, and some programs offer flexibility only to ''superior'' performers. Some programs encourage self-reporting by offering reduced penalties.

The main concern about non-regulatory approaches is that they can result in a lessening of regulatory oversight. When a regulatory agency reduces its emphasis on inspections and enforcement, allows ''innovative'' methods, and relies on self-reporting, there is always the potential for serious non-compliance with requirements and subsequent environmental damage. For example, offering reduced penalties for reporting findings of ''self-audits'' has been criticized as encouraging abuses.

2. Examples of Existing EPA Non-Regulatory Programs

EPA has developed a number of programs targeted to improve environmental performance. ''Partners for the Environment'' is the collective name for voluntary programs developed by EPA Headquarters or regional offices. These programs primarily involve agreements between EPA and individual regulated entities, and focus on taking performance to a level beyond simple compliance with regulatory requirements (or, in some cases, innovative approaches may be developed that provide some flexibility in the strict regulatory framework to achieve overall goals). In that sense, it may be difficult to apply non-regulatory approaches where there are competing requirements (as for mixed waste) or inconsistent requirements (as for individual States and TENORM). We offer this discussion not to endorse any specific program as especially suited to address low-activity radioactive wastes, but to encourage thought and comment about innovative approaches that might be developed, and to provide examples of the types of efforts EPA has traditionally embraced. Individual EPA programs include:

- Project XL (eXcellence and Leadership)—Project XL is a national pilot program that allows State and local governments, businesses and Federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the experiment. Project XL uses eight criteria to assess potential projects, including producing superior environmental results, cost savings, or regulatory flexibility; demonstrating innovative processes; pollution prevention; and ability to transfer lessons or data to other facilities. ''Project XL for Communities'' also looks for strategies that provide economic opportunity and incorporate community planning. Project XL has approved projects related to mixed waste treatment.
- National Environmental Performance Track—The National Environmental Performance Track program is a voluntary partnership program that recognizes and rewards businesses and public facilities that demonstrate strong environmental performance beyond current requirements. It encourages continuous environmental improvement through the use of environmental management systems, local community involvement, and measurable results. Incentives to participants include public recognition, low priority for routine inspections, partnerships with State agencies, and regulatory changes to streamline requirements. There are nearly 300 participants in the program.
- Code of Environmental Management Principles (CEMP)—CEMP was developed in response to Executive Order 12856 (''Federal Compliance with Right-to-Know Laws and Pollution Prevention,'' August 3, 1993), which called for EPA to develop an environmental challenge program for Federal agencies. CEMP incorporates elements of state-of-the-art

environmental management systems (such as the ISO 14000 series) to emphasize sustainable environmental performance and an integrated view of environmental activities to move agencies ''beyond compliance.'' CEMP was reaffirmed as a basis for environmental performance and leadership in Executive Order 13148 (''Greening the Government Through Leadership in Environmental Management,'' April 21, 2000).

• Energy Star—Energy Star was introduced by the U.S. Environmental Protection Agency in 1992 as a voluntary labeling program designed to identify and promote energy-efficient products, in order to reduce carbon dioxide emissions. EPA partnered with the U.S. Department of Energy in 1996 to promote the Energy Star label, with each agency taking responsibility for particular product categories. Energy Star has expanded to cover new homes, most of the buildings sector, residential heating and cooling equipment, major appliances, office equipment, lighting, consumer electronics, and other product areas.

3. National Academy of Sciences Studies

Though not limited to non-regulatory considerations, two efforts of the National Academy of Sciences (NAS) have a bearing on our approach to LARW. In 1999, NAS provided a report evaluating the existing guidelines for exposures to TENORM. NAS concluded that different guidelines among regulatory agencies were primarily related to policy, rather than scientific or technical, judgments. (*See* ''Evaluation of Guidelines for Exposures to Technologically Enhanced Naturally Occurring Radioactive Materials,'' National Academy Press, 1999.) In addition, NAS is about to conduct a study of options for managing LARW, including low-level radioactive waste, TENORM, and FUSRAP wastes. NAS could make recommendations for statutory, regulatory, policy, or other actions. Financial support for this study is being provided by EPA, NRC, DOE, USACE, and the Southeastern Low-Level Radioactive Waste Compact. We believe this study will help us in developing our rulemaking and in identifying other non-regulatory approaches that might prove effective. We intend to follow this study and, with this action, seek the views of the general public on these matters as input to develop an integrated strategy for assuring the proper management of such diverse wastes.

B. Non-Regulatory Approaches for LAMW and Other Low-Activity Radioactive Wastes

1. Develop Guidance

While establishing Federal regulations for pre-UMTRCA byproduct material and TENORM wastes faces certain hurdles, establishing guidance may achieve many of the same goals but without a complex regulatory framework. While guidance would not have the enforcement ''teeth'' of a regulation, guidance does provide a common reference point and to depart from such guidance risks damaged credibility for those industries or entities not following accepted guidance. Another question is what kind of guidance; Federal guidance, suggested guidance, joint guidance, and State guidance are all possibilities. It may be possible to establish Federal guidance for both pre-UMTRCA byproduct material and TENORM wastes but Federal guidance has traditionally been used to guide Federal agencies in matters related to radiation protection. Given that not all of this material falls under Federal agency purview, the usefulness of Federal guidance for pre-UMTRCA byproduct material and TENORM may be limited. While not Federal guidance, strictly speaking, we have published suggested guidance for dealing with the radioactive residues from treating drinking water. (*See* 56 FR 33091, July 18, 1991.) Guidance in the form of ''suggested State regulations'' has been developed over the years for a variety of radiation protection issues, including TENORM, by the Conference of Radiation Control Program Directors (CRCPD). Whether a unified guidance applicable to both pre-UMTRCA byproduct material and TENORM wastes is possible and practical is open to question. We welcome the views of stakeholders on this matter. Perhaps joint State-Federal guidance would be appropriate to cover both pre-UMTRCA byproduct material and TENORM wastes.

2. Partner With Selected Stakeholders To Develop Waste-Specific ''Best Practices''

An alternative approach to guidance might be a partnership between Federal, State, and industry representatives to establish ''best practices'' targeted to specific industries or waste types. Again, lacking the ''teeth'' of a formal regulation, a code of ''best practice'' creates a common reference point of accepted practice that brings peer pressure and public pressure on those entities failing to abide by such a code. Establishing such best practice that is endorsed and used by the industries in question may also lessen the need for formal regulation and result in cooperation rather than confrontation. It is possible that industry could establish an in-house panel of recognized experts and affected stakeholders that would develop, monitor, and facilitate the implementation of best practices by companies within a given industry, even allowing the use of the panel's code of ''best practices'' logo to companies abiding by this code. This might work in a manner similar to our Energy Star program, a voluntary program to identify and promote energy efficient products. We welcome views on the possible application of this approach, or other approaches. What wastes or specific industries could benefit most from this approach? How useful might the development of best practices be for the affected industries? What incentives exist or may be encouraged to promote the development and implementation of best practices?

In an action that combines aspects of the guidance and ''best practices'' approaches, EPA recently issued a ''Guide for Industrial Waste Management'' (EPA530R–03–001). EPA joined with members of State governments, tribes, industry, and environmental groups to develop this guidance on how best to manage non-hazardous industrial solid wastes, which are generated in much larger volumes than municipal solid wastes. The Guide is intended to be a practical resource, covering engineering and scientific principles applicable to developing and operating waste management units, effective communication, risk assessment, and other topics. Computer models and other tools are included in the Guide, which is also available on CD–ROM (EPA530–C–03–002). *See http://www.epa.gov/epaoswer/non-hw/industd/index.htm* for more information.

C. Request for Information: Non-Regulatory Alternatives to Our Disposal Concept

In general, we request information that would help us to evaluate whether non-regulatory approaches might be effective in addressing issues associated with low-activity radioactive waste management and disposal (see also questions in D, below). We also request information that would help us determine what types of non-regulatory actions would be most effective, how they would be developed, and who might need to be involved in their

development. We welcome information on:

- The effectiveness of various non-regulatory programs at achieving their stated goals
- The relative cost of implementing a non-regulatory vs. regulatory program
- The ease of implementing a non-regulatory vs. regulatory program
- Whether existing non-regulatory programs could be used to address LARW

D. Questions for Public Comment: Non-Regulatory Alternatives to Our Disposal Concept

1. In general, do you think that a non-regulatory approach could be effective at addressing the problems associated with management and disposal of low-activity radioactive waste? Why or why not? (section IV)

2. What has been your experience with EPA non-regulatory programs, such as those described in section IV.A.2? Which programs have been most effective? Why?

3. What is your experience with non-regulatory programs at other Federal or State agencies?

4. Do you see particular aspects of LARW management and disposal that could not be addressed outside of regulatory action? Aspects that would be particularly amenable to non-regulatory action?

5. Is guidance a viable mechanism to support proper management of LARW? Who should develop such guidance? What topics should it cover? (IV.B.1)

6. Would a ''best practices'' approach to management of LARW give generators and disposal facilities sufficient support to ensure proper management practices? Would incentives to adopt a ''code of conduct'' be necessary? Could such a ''code'' encompass the wide range of generating processes and waste characteristics? How would regulators view such an approach? (IV.B.2)

7. What other non-regulatory approaches might be appropriate to address LARW management?

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

OMB has determined that this Advance Notice of Proposed Rulemaking is ''non-significant'' according to the criteria of Executive Order 12866.

Dated: November 4, 2003.

Marianne Lamont Horinko,

Acting Administrator.

[FR Doc. 03–28651 Filed 11–17–03; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1883/P.L. 108–124

To designate the facility of the United States Postal Service located at 1601-1 Main Street in Jacksonville, Florida, as the ''Eddie Mae Steward Post Office''. (Nov. 11, 2003; 117 Stat. 1346)

S. 470/P.L. 108–125

To extend the authority for the construction of a memorial to Martin Luther King, Jr. (Nov. 11, 2003; 117 Stat. 1347)

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